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General Assembly
Emergency Special Session

Official Records

24th meeting
Friday, 16 July 2004, 10 a.m.
New York

President: The Hon. Julian R. Hunte ..... (Saint Lucia)

The meeting was called to order at 10.10 a.m.

The President: I declare the tenth emergency special session of the General Assembly on illegal Israeli actions in occupied East Jerusalem and the rest of the occupied Palestinian territory resumed, in accordance with the decision adopted by the General Assembly at the twenty-third meeting of its resumed tenth emergency special session on 8 December 2003, whereby the Assembly decided "to adjourn the tenth emergency special session temporarily and to authorize the current President of the General Assembly to resume its meetings upon request from Member States".

In that connection, I should like to draw the attention of delegations to the following: document A/ES-10/274, which contains the text of a letter dated 12 July 2004 from the Permanent Representative of Jordan to the United Nations addressed to the President of the General Assembly, in which he requested, on behalf of the States members of the League of Arab States, the resumption of the tenth emergency special session; and document A/ES-10/275, which contains the text of a letter dated 13 July 2004 from the Chargé d'affaires a.i. of the Permanent Mission of Malaysia to the United Nations addressed to the President of the General Assembly, on behalf of the Chairman of the Coordinating Bureau of the Non-Aligned Movement, by which he conveys the support of the Non-Aligned Movement for the request for the resumption of the tenth emergency special session.

Tribute to the memory of His Excellency Mr. Thomas Klestil, President of Austria

The President: Before we take up the item on our agenda for this meeting, it is my sad duty to pay tribute to the memory of the late President of Austria, His Excellency Mr. Thomas Klestil, who passed away on Tuesday, 6 July 2004. On behalf of the General Assembly, I request the representative of Austria to convey our condolences to the Government and the people of Austria and to the bereaved family of His Excellency Mr. Thomas Klestil.

The members of the General Assembly observed a minute of silent prayer or meditation.

The President: I now give the floor to the representative of Burkina Faso, speaking on behalf of the Group of African States.

Mr. Kafando (Burkina Faso) (*spoke in French*): The African Group associates itself with the solemn tribute to the memory of Thomas Klestil, former President of Austria, who died on 6 July 2004.

Patriotism, faithfulness and selflessness: those seem to me, from his remarkable biography, to be the cardinal virtues that characterized Mr. Klestil's full life.

Patriotism led him to the world's thoroughfares, always with the sole ambition to serve his country's interests. His qualities as a skilful diplomat were universally appreciated, whether at the United Nations, where he was a Permanent Representative; in the United States, where he served as his country's

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ambassador to the United States Government; or in the post of Secretary General of the Ministry of Foreign Affairs at Vienna.

Faithfulness, or resolute attachment to basic values — which, as we know, is a trait of Germanic peoples — was another constant in his life.

Selflessness, or willingness to sacrifice, brought him to the summit of political power: to his country's presidency, where his role was far from ceremonial. In fact, as head of State, he actively contributed to Austria's entry into the European Union and very often took stands against injustice in the Middle East and throughout the world.

Inspired by those undeniable qualities, we pay a humble and respectful tribute to the memory of an illustrious man. Through Ambassador Gerhard Pfanzelter, we express our sincere condolences to his family and to the Government and the people of Austria.

The President: I now give the floor to the representative of Papua New Guinea, speaking on behalf of the Group of Asian States.

The President: I now give the floor to the representative of Papua New Guinea, who will speak on behalf of the Group of Asian States.

Mr. Aisi (Papua New Guinea): On behalf of the Group of Asian States at the United Nations, the delegation of Papua New Guinea has the honour to pay tribute to the memory of His Excellency Thomas Klestil, the late President of Austria.

We would like to extend our deepest condolences and sympathy to the family of the late President and to the people and the Government of Austria. The demise of President Klestil is, we know, a great loss to Austria and to the international community. The Group of Asian States at the United Nations shares the pain of the people of Austria on the passing of their late President.

I also convey the Group's condolences to the people and the Government of Jamaica on the passing of their former Prime Minister, the Most Honourable Hugh Lawson Shearer.

The President: I now give the floor to the representative of Ukraine, who will speak on behalf of the Group of Eastern European States.

Mr. Kuchinsky (Ukraine): On behalf of the States members of the Group of Eastern European States, and on my own account, I would like to express our deepest condolences on the death of the Federal President of the Republic of Austria, Mr. Thomas Klestil.

We pay tribute to his deep sense of service both to the Austrian people and to all humanity. We have high regard for his professionalism, his wisdom and the calm and effective manner that he so unfailingly displayed over many years — whether on his various diplomatic posts, including here at the United Nations, or as the leader of the Austrian nation from 1992 until his last breath just a few days ago.

Mr. Klestil will always be remembered as a statesman on the global scale, an honourable person who made an outstanding contribution to improving European security and promoting peace and democracy. For the States members of our Group, he will always be highly valued for his dedication to strengthening ties with Central and Eastern Europe so that countries of the region could enhance mutual cooperation, consolidate their unity and build up a stable and lasting partnership.

Let me hereby send our sympathy and condolences to the family of the late Mr. Klestil, and to the Government and the people of Austria.

The President: I now give the floor to the representative of Haiti, who will speak on behalf of the Group of Latin American and Caribbean States.

Mr. Mérorès (Haiti) (*spoke in French*): I wish, on behalf of the people and the Government of Haiti and on behalf of the States members of the Group of Latin American and Caribbean States, which I have the honour of chairing this month, to pay tribute to the memory of Mr. Thomas Klestil, Federal President of the Republic of Austria, who died on 6 July.

Austria and the international community as a whole have lost a major figure in contemporary history. President Klestil was a statesman of grand vision in public affairs and international policy, and he had a lengthy diplomatic and political career. A brilliant diplomat, he played a fundamental role in establishing the United Nations Office at Vienna in 1974. He also served with panache as Permanent Representative to the United Nations from 1978 and, at the Austrian embassy in Washington, as Ambassador Extraordinary and Plenipotentiary from 1982.

Benefiting from his people's renewed confidence in 1992 and 1998, and also known for his progressive

social ideas, President Klestil was known for his work on behalf of peace and economic and social development. He advocated a politically strong and economically powerful Europe and played a prime role in the accession of Austria to the European Union. Mindful of the importance of maintaining close relationships with other countries of the region, he undertook as head of State to visit all the States members of the Union.

Moreover, he worked to extend Austria's friendly relations and economic cooperation with the rest of the world.

He leaves behind him the memory of a great head of State and a political vacuum in his country that will be very difficult to fill. I wish once again to express the grief of the Group of Latin American and Caribbean States and our sincere condolences and deep sympathy to the people and the Government of Austria and to the family of the illustrious deceased.

The President: I now give the floor to the representative of Luxembourg, who will speak on behalf of the Group of Western European and other States.

Mr. Hoscheit (Luxembourg) (*spoke in French*): It is with great feeling that the members of the Group of Western European and other States associate themselves with the tribute that the President of the General Assembly has paid to Mr. Thomas Klestil, late President of Austria, who recently died just a few days before the end of his second presidential term. Among the many activities that President Klestil undertook as head of State between 1992 and 2004, we would like to mention in particular his tireless international endeavours, which took this renowned and respected statesman to every region of the world.

President Klestil was a convinced European, and he was leading his country when it joined the European Union in 1995. In addition, it was during his second term of office that 10 new member States joined the Union, a historic event that owed a great deal to the tireless efforts of the Austrian President in enhancing dialogue and cooperation with the countries of Central and Eastern Europe. His intense European and national efforts were part of a professional life which was largely devoted to diplomacy and, in particular, to multilateral cooperation. As such, his work in New York during his term as Permanent Representative of his country to the United Nations between 1978 and 1982, as well as in Vienna, where he played a major role in welcoming the United Nations agencies, is particularly significant and will remain forever in the annals of the United Nations.

Austria has just lost a highly respected and eminent statesman, and we pay tribute to the memory of Mr. Thomas Klestil and extend our sincere condolences to the family, as well as to the people and the Government of Austria.

The President: I now give the floor to the representative of the United States, who will speak on behalf of the host country.

Mr. Siv: (United States of America): The United States is deeply saddened by President Klestil's death. He was a distinguished statesman and a good friend, who spend nearly two decades of his life in America, including as Consul General in Los Angeles and as Ambassador in Washington. President Klestil had also previously served as Austria's Permanent Representative to the United Nations. He was well known as a man dedicated to freedom and human dignity. As President, he was a committed and eloquent advocate of those values. He played a key role in bringing important United Nations organizations to Vienna.

President Bush asked the Austrian-born Governor of California, Arnold Schwarzenegger, to head the presidential delegation to the funeral. The United States Government and the American people join all the people of Austria in mourning President Klestil's passing. He will be greatly missed.

The President: I now call on the representative of Austria.

Mr. Pfanzelter (Austria): On behalf of the Austrian Government and the Austrian people, I would like to convey to you, Mr. President, the expression of our profound gratitude for your most thoughtful gesture in paying tribute to the memory of Federal President Thomas Klestil.

President Klestil was a true Austrian patriot, a convinced European and a devoted global citizen. His dedicated commitment to the dialogue among nations, cultures and civilizations gained him respect, friendship and admiration in all regions of the world.

President Klestil believed in the virtues of multilateral diplomacy and considered the United Nations to be the indispensable forum to advance the common goals of mankind. As we all know, he served

as Permanent Representative of my country to the United Nations between 1978 and 1982. Ever since his mission in New York, he maintained a genuine friendship with, and great appreciation for, the Organization, in particular for the work of the Secretariat and of delegations. In his 12 years as head of State of Austria, the United Nations was always at the top of his priorities.

To the representatives of the regional groups and of the host country, who have so thoughtfully and eloquently paid tribute to our late President, I would like to express my sincere thanks and appreciation.

Floods in Nicaragua

The President: I should like, on behalf of all the members of the General Assembly, to extend our deepest sympathy to the Government and people of Nicaragua for the loss of life and extensive material damage that have resulted from the recent floods. May I also express the hope that the international community will show its solidarity and respond promptly and generously to any request from Nicaragua for assistance in its present plight, as well as to any appeal for aid.

I now give the floor to the representative of Nicaragua.

Mr. Sevilla Somoza (Nicaragua) (*spoke in Spanish*): I thank the President for his words.

I should like to report to the General Assembly about the emergency caused by the landslides in the Cerro Musún area of north-central Nicaragua. Beginning on 26 June 2004, the North and South Atlantic autonomous regions and the Department of Matagalpa were seriously affected by the heavy rains caused by tropical depressions numbers 14, 15 and 16, resulting in loss of human life, thousands of victims and considerable damage to both our basic infrastructure and production. Consequently, on 4 July, the Government of Nicaragua declared a state of natural disaster in the affected regions.

In coordination with State ministries and departmental and municipal committees, the National System for the Prevention, Mitigation and Management of Disasters has prepared a preliminary report on the damage caused in 54 communities in the communities of Río Blanco, Prinzapolka and La Cruz del Río Grande. That affected 3,294 families, producing 18,357 victims and 25 fatalities. In order to deal with the disaster, a plan of action was prepared for immediate and medium-term implementation.

Immediate steps include feeding 18,357 people, providing psychological counselling for families, providing equipment for vector control, purifying water, the provision of food and supplies, strengthening the forestry early warning communication system, the planting of winter crops, supporting the national police and building and repairing temporary shelters in Río Blanco.

Medium-term activities include updating the management plan for the Cerro Musún protected area; a production revitalization plan for 100 farms that includes watershed management, the reforestation of 1,000 hectares, an environmental education programme, strengthening the land monitoring, management and development programme of the protected area; providing comprehensive care for children under the age of 6; strengthening the network of the Nicaraguan Institute for Territorial Studies; building schools in the departments of Río Blanco and Prinzapolka; rebuilding 555 kilometres of roads and byways; and the restoration and construction of 830 homes.

On behalf of the Government and people of Nicaragua, I would like to express our gratitude to the World Health Organization, UNICEF, the World Food Programme and brotherly countries for their immediate contributions in response to this emergency. I would also like to thank the United Nations system for its coordination, as well as for its appeal to the international community for the provision of the contributions needed to address the immediate needs of the victims in the affected area for the next three months.

Scale of assessments for the apportionment of the expenses of the United Nations (A/ES-10/280 and Add.1)

The President: In keeping with the established practice, I should now like to invite the attention of the General Assembly to document A/ES-10/280, which contains a letter addressed to the President of the General Assembly from the Secretary-General, informing the Assembly that 15 Member States are in arrears in the payment of their financial contributions to the United Nations under the terms of Article 19 of the Charter. May I take it that the General Assembly duly takes note of that information?

It was so decided.

The **President**: Additionally, I should like to inform members that Mauritania has made the necessary payment to reduce its arrears below the amount specified in Article 19 of the Charter. May I take it that the General Assembly duly takes note of that information?

It was so decided.

The President: This information will be reflected in an addendum to document A/ES-10/280.

Agenda item 5 (*continued*)

Illegal Israeli actions in occupied East Jerusalem and the rest of the Occupied Palestinian Territory

Note by the Secretary-General (A/ES-10/273)

The President: In connection with this item, the General Assembly has before it a note by the Secretary-General transmitting the advisory opinion of the International Court of Justice on the legal consequences of the construction of a wall in the occupied Palestinian territory, issued as document A/ES-10/273.

I would also like to inform Member States that a draft resolution will be circulated later today.

I now give the floor to the Observer of Palestine.

Mr. Al-Kidwa (Palestine): Allow me first to join the Assembly in expressing our condolences and sympathy upon the passing of President Thomas Klestil of Austria. Our sympathies also go to the people of Nicaragua.

I wish to thank you, Sir, for all of your efforts in wisely and capably guiding the work of the General Assembly and for responding positively and in a timely manner to the request to reconvene this tenth emergency special session.

Palestine comes before this Assembly today with humility and deep conviction in the purposes and principles enshrined in the Charter of the United Nations, the primacy of international law and the central role to be played by this Organization in international relations. One week ago, on 9 July 2004, the International Court of Justice issued its advisory opinion on the legal consequences of the construction of a wall in the occupied Palestinian territory, pursuant to the request submitted by the General Assembly in resolution ES-10/14 of 8 December 2003. The advisory opinion, rendered with near unanimity by the Court, is a strong, clear and comprehensive determination of the applicable rules and principles of international law, including international humanitarian law and human rights law, and the legal obligations arising from the breach of that law by Israel, the occupying Power, as a result of its construction of a wall in the occupied Palestinian territory, including in and around East Jerusalem.

This advisory opinion represents a momentous and pivotal development. It has brought international law — which for too many years has been sidelined and undermined — back to the forefront of the dialogue concerning the question of Palestine and the Israeli-Palestinian conflict. And, while the advisory opinion may be considered a victory for the Palestinian people, it is also a victory for all the peoples of the region and for the future of that region. It is a watershed event that has the potential to elevate the situation in the Middle East to a new level — one that is based on international law and the ideals of peace and reconciliation. At the same time, the International Court of Justice's ruling is without a doubt a victory for all those who believe in the rule of law and constantly strive to uphold that law and the authority and integrity of the United Nations system.

Having had a week's time to truly absorb and reflect upon the advisory opinion, we take this opportunity before the international community to express our deep gratitude to the Court and to honour the judges who met the challenge before them with wisdom, courage and trueness to their responsibility to uphold the rules and principles of international law. We acknowledge and fully respect the Court's important role and contribution within the United Nations system and the impact that this important opinion will have on the Israeli-Palestinian conflict and beyond.

Now that the Court has rendered its opinion, we have returned to the General Assembly, as the requesting organ, in the context of the tenth emergency special session, under the "Uniting for peace" procedure. After unanimously finding that it had jurisdiction, and finding no compelling reasons to decline the request, the Court decided to reply to the question put to it by the General Assembly in order to provide the Assembly with the elements of law necessary for it in its action. In fact, the Court clearly determined the matter to be of relevance to the Assembly, stating that,

> "given the powers and responsibilities of the United Nations in questions relating to international peace and security, it is the Court's view that the construction of the wall must be deemed to be directly of concern to the United Nations". (*A/ES-10/273, p.21*)

Yet, we are not here to debate or to reach conclusions on the nature or status of the wall, for that debate has been concluded. The Court has deliberated on the matter and it has spoken. The Court's conclusions must represent the final word on this matter. It has already determined that

> "the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated regime, are contrary to international law". (*ibid., p.53*)

We are here to address the legal consequences of this matter and to take action in this regard.

In its advisory opinion, the Court, the principal judicial organ of the United Nations, definitively spelled out the applicable law concerning this case. In addition to the rules and principles enshrined in the Charter and relevant General Assembly and Security Council resolutions, the Court established the provisions of international humanitarian law and human rights law relevant to the matter. It determined that the Hague Regulations — considered to have become part of customary international law — and the Fourth Geneva Convention are indisputably applicable in the occupied Palestinian territory, including East Jerusalem. The Court also found that the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child are also applicable within the occupied Palestinian territory.

The advisory opinion thoroughly details the violations of these provisions of international law by Israel, the occupying Power, as a result of its construction of the wall and its associated regime. Cognizant of the time constraints, I will not go into depth in this regard, but I believe that it is necessary to briefly draw attention to the Court's important and authoritative determinations.

The Court found that the customary rule regarding the illegality of the acquisition of territory resulting from the threat or use of force — a principle enshrined in the Charter and reaffirmed in General Assembly resolution 2625 (XXV) of 1970 — had been violated by Israel. The Court concluded that

> "... the construction of the wall and its associated régime create a 'fait accompli' on the ground that could well become permanent, in which case, and notwithstanding the formal characterization of the wall by Israel, it would be tantamount to *de facto* annexation". (*ibid., p. 39*)

On that point the Court prefaced its consideration of the matter with an examination of the status of the territory in question, dealing with the issue clearly and decisively. The Court found that the area east of the 1949 Armistice Line, namely, the Green Line, and the former eastern boundary of Palestine under the Mandate, including East Jerusalem, was occupied by Israel in 1967 and was, under international law, considered to be occupied territory. The Court concluded that subsequent events have done nothing to alter that situation and that that territory, including East Jerusalem, remains occupied and that Israel continues to have the status of occupying Power. It is essentially in that territory, the Court found, that Israel has constructed, or plans to construct, the wall, in violation of international law.

In that connection, the matter of Israel's unlawful colonization of Palestinian land over the decades was directly addressed by the Court. The Court found itself obliged to refer to Israel's illegal measures with regard to Jerusalem and the settlements, insofar as they are unquestionably relevant to the construction and planning of the wall. Referring the Fourth Geneva Convention, the Court stated that

> "since 1977, Israel has conducted a policy and developed practices involving the establishment of settlements in the Occupied Palestinian Territory, contrary to the terms of article 49, paragraph 6". (*ibid., p. 39*)

The Court continued that, as such,

> "the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law"/ (*ibid., p. 39*)

In relation to the wall, the Court determined that

> "the wall's sinuous route has been traced in such a way as to include within that area the great majority of the Israeli settlements in the occupied Palestinian Territory (including East Jerusalem)". (*ibid. pp. 38-39*)

Even Judge Buergenthal, who voted against the Court's decision to comply with the request for an advisory opinion, shared the Court's conclusions about the applicability of international law to the occupied Palestinian territory. With particular regard to article 49 of the Fourth Geneva Convention, Judge Buergenthal stated that

> "I agree that this provision applies to the Israeli settlements in the West Bank and that their existence violates article 49, paragraph 6. It follows that the segments of the wall being built by Israel to protect the settlements are *ipso facto* in violation of international humanitarian law." (*ibid., p. 83*)

The Court's position on that issue — on the basis of international law — is conclusive. There can be no further question or doubt as to the illegal status of the wall — or the settlements, for that matter — that Israel has been building — and continues to build — in the occupied Palestinian territory, including East Jerusalem.

As to the specific violation of other relevant provisions of the law, the Court found that the obligations violated by Israel include certain obligations *erga omnes*, including

> "the obligation to respect the right of the Palestinian people to self-determination, and certain of its obligations under international humanitarian law". (*ibid., p. 51*)

The Court concluded, inter alia, that Israel's construction of the Wall

> "severely impedes the exercise by the Palestinian people of its right to self-determination, and is therefore a breach of Israel's obligation to respect that right". (*ibid., p. 62*)

In its opinion, the Court also observed that, with regard to principle of the right to self-determination, which is a right of all peoples that is enshrined in the Charter and that has been reaffirmed by the General Assembly and by international covenants, "the existence of a 'Palestinian people' is no longer in issue". (*ibid., p. 38*)

Indeed, the inalienable and legitimate right of that people to self-determination cannot continue to be questioned or rejected, and its violation must cease.

The Court also determined that

> "the construction of the wall has led to the destruction or requisition of properties under conditions which contravene the requirements of articles 46 and 52 of the Hague Regulations of 1907 and of article 53 of the Fourth Geneva Convention". (*ibid., p. 44*)

It further concluded that the changes being caused to the demographic composition of the occupied Palestinian territory as a result of the construction of the wall and the imposition of its associated regime, inasmuch as they are contributing to the departure of Palestinian populations from certain areas, are in contravention of article 49 of the Fourth Geneva Convention. And, in terms of human rights instruments, the Court found that the wall and its regime impede the liberty of movement and impede, inter alia, the right of the Palestinian people to work, to health, to education and to an adequate standard of living.

The violation of the freedom of access to the Holy Places was also addressed by the Court, which stated that Israel "must ensure freedom of access to the Holy Places that came under its control following the 1967 War". (*ibid., p. 49*)

Prior to turning to its determination of the legal obligations resulting from those violations, the Court addressed the security argument repeatedly made by Israel to justify its construction of the wall. The Court concluded that "Article 51 of the Charter has no relevance in this case." (*ibid., p. 47*) It also stated that it "is not convinced that the specific course Israel has chosen for the wall was necessary to attain its security objectives" (*ibid., p. 47*)

Moreover, while the Court recognized Israel's right and duty to respond in order to protect the life of its citizens, the Court emphasized that "The measures taken are bound nonetheless to remain in conformity with applicable international law." (*ibid., p. 48*) Thus, the Court concluded that "Israel cannot rely on a right of self-defence or on a state of necessity in order to preclude the wrongfulness of the construction of the wall". (*ibid. p. 48*)

In the light of its findings, the Court was very clear in its response to the Assembly's question as to the legal consequences arising from these violations of international law by Israel as a result of its construction of the wall. The Court comprehensively examined those consequences in paragraphs 149 to 160 of its advisory opinion. The consequences are set out in straightforward terms in the *dispositif* of the opinion, which have now been set forth in the draft resolution before the Assembly.

With regard to the occupying Power, the Court concluded that Israel is under an obligation to cease its construction of the wall it is building in the occupied Palestinian territory, including in and around East Jerusalem; to dismantle those parts already constructed; and to repeal or render ineffective all legislative and regulatory acts relating thereto. The Court also determined that Israel is under an obligation to make reparations for all damage caused by the construction of the wall.

In terms of the legal obligations of States, the Court concluded that all States are under the obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining it. It also determined that all States parties to the Fourth Geneva Convention have the additional obligation of ensuring Israel's compliance with the Convention.

Lastly, the Court concluded that the United Nations, in particular the General Assembly and Security Council, should consider what further action is required to bring to an end the illegal situation caused by the construction of the wall and its associated regime, taking due account of the present Advisory Opinion.

I must reiterate before the Assembly that the conclusions of the International Court of Justice on the wall are non-negotiable. They are definitive, and we will proceed on that basis. This is not simply a matter of the adjustment of the route. The issue is the removal of every part of the wall that has been built in the occupied Palestinian territory, including East Jerusalem.

For our part, as a first step following the Court's advisory opinion, we have returned to the international community at the General Assembly, as the requesting organ, to enable the Assembly to undertake its responsibilities in accordance with the Charter and its obligations as set out in the advisory opinion. This is also in line with the permanent responsibility of the United Nations towards the question of Palestine until it is resolved in all its aspects on the basis of international legitimacy. That responsibility was explicitly referred to by the Court.

The aim of the draft resolution before the Assembly today is two-fold: acceptance of the advisory opinion and a call for compliance by Israel, the occupying Power, and by Member States with international legal obligations as set out in the advisory opinion. It is our strong hope that this step will be accepted by all Member States in fulfilment of their Charter obligations. We must also set the stage for further actions by the United Nations and by the High Contracting Parties to the Fourth Geneva Convention, as stated by the Court, to end the current illegal situation in the case of non-compliance. Some preparations should be undertaken at present.

However, at a later stage, in the case of Israel's non-compliance with its legal obligations, we expect States, individually, regionally and collectively at the United Nations, to undertake actions consistent with their legal obligations as determined by the Court. Those should include, inter alia, actions against all settlement activities and settlement products as well as sanctions against companies and entities involved in the construction of the wall or involved in other unlawful activities in the occupied Palestinian territory, including East Jerusalem. Although we are now in the early stages of following up on the advisory opinion, it is not too early to begin thinking about such options, particularly in the light of Israel's immediate negative response in this regard.

In accordance with the Charter, and consistent with the Court's ruling, it is clear that further action would, of course, entail the involvement of the Security Council, and we intend to pursue that. In that regard, the timing of bringing the issue before the Council will not be governed by extraneous considerations but only by developments on the ground with regard to the wall and the degree of compliance.

It is obvious that we must anticipate action in the Security Council. Israel has already declared its rejection of the Court's authority and the advisory opinion and has declared its intention to continue constructing the wall in total disrespect of the Court and the advisory opinion and in violation of its legal obligations under international law as concluded

therein. We shall not exempt the Security Council from its responsibilities, irrespective of the threat of the use of veto, including — and this is a testament to the extent of the abuse of this power — the threat by Israeli officials of the use of the United States veto. The threat of veto will not thwart us and all others who respect and uphold international law. Indeed, it is important to recall that it was the veto that led us to the doors of the International Court of Justice, as we did not cower but, instead, continued to seek implementation of the law within the United Nations system.

Successive vetoes have contributed absolutely nothing to the search for peace for the Palestinian and Israeli peoples. On the contrary, the vetoes have undermined and excessively complicated that search. Moreover, those vetoes have harmed the integrity of the system and engendered a growing cynicism in international relations about the credibility and efficacy of the Organization. With regard to the threat of vetoing a resolution concerning the respect of the advisory opinion and the legal obligations determined therein, we believe such an action would be tantamount to attacking the system and be a formal declaration of responsibility. It remains our hope, of course, that such a situation will not materialize.

Israel's arrogant declarations of disdain and its rejection of the Advisory Opinion, expressed even at the highest levels of the Government by Prime Minister Sharon, are contemptuous. Instead of seriously considering the matter and the need and means for Israel to comply with its obligations under international law, Israeli officials are attempting to drag the debate to a new low. This is most exemplified by the shameful individual who dared to say that the advisory opinion would be put in "the garbage can of history" and another who cynically tried to portray the whole exercise as an attack against Jews. Such declarations not only must be deemed disrespectful of the Court and its opinion but must be considered a blatant contempt for the rule of law in international relations that entails clear liability.

Regrettably, such Israeli positions are not surprising. We have become inured to them. They are reflective of the typical Israeli school of thought espoused by officials who have consistently violated international law, consistently colonized our land, consistently violated United Nations resolutions, consistently violated the human rights of our people and consistently committed grave breaches, including war crimes, against our people — all with impunity under the protection of Israel's patron State. Now, they are taking this to another level with the position they have taken vis-à-vis the International Court of Justice.

Nevertheless, we believe that this is not the last word. We believe that there are many reasonable and sane people in Israel who can change things. What we need to do now is to help those people to strengthen their positions while at the same time pressuring the rejectionists, with the aim of reaching the correct position: respect of the advisory opinion and compliance with the obligations of the occupying Power. We have chosen to proceed slowly precisely for that reason. We want to allow more time to achieve this result, during which we hope that different and positive dynamics will come into play. We also hope that during this time the United States will find itself able to take the right position with regard to this matter.

As for the Palestinian people, the advisory opinion has been having a positive — not a negative — impact on Palestinian society. People are seeing that international law can bring them justice. As a result, the law and compliance with it will take on even more importance and prominence within this society. This will be instrumental in developing and ingraining a culture of respect for the law, which is essential for the growth and progress of any society. Without a doubt, this advisory opinion provides a tremendous lesson on the primacy of the law and its rule, and everyone, especially in the region, must see this.

Let me say a word about the road map. It is obvious that the road map, which enjoys international consensus and support, can neither survive nor proceed without the cessation of the construction of the wall, which is making the two-State solution to the Israeli-Palestinian conflict — the ultimate goal of the road map — impossible to achieve. A clear position by the Quartet is critically needed in that regard. Furthermore, proposals or developments such as a possible withdrawal of the occupying Power from Gaza must be carried out as part of the road map, and not in a vacuum. That would require the taking of similar steps by Israel in the West Bank and would, of course, require, and be contingent on, the cessation of the construction of the wall and the removal of the existing portion.

In the end, Israel will have to choose whether to declare itself officially, morally and legally an outlaw

State, or to reconcile itself with a new reality and comply with the Court's advisory opinion. We come before the Assembly with this introductory draft resolution with the intention of giving it a chance to comply with the opinion and to make serious efforts towards that end. It is Palestine's strong hope that Israel will decide to comply with its obligations under international law and that the international community will act decisively to ensure respect for the law.

We thus hope that all Member States will firmly support the draft resolution as the first important step in that direction. Palestine has always been grateful for the overwhelming support of the General Assembly, and we are confident that it will continue to take principled positions with regard to this matter, particularly at this most critical time.

Mr. Al-Hussein (Jordan) (*spoke in Arabic*): I am most honoured to speak at this important meeting today as the head of the Arab Group for this month.

At the outset, I should like, on behalf of the Arab Group, to join those who spoke before me in expressing our deepest condolences to the Government and the people of Austria on the passing of President Thomas Klestil last week. I should like also to express, on behalf of the Arab Group, our sympathy and our deepest condolences to the Government and the people of Nicaragua, who have so greatly suffered as a result of the floods in that country.

The General Assembly is resuming its tenth emergency special session today on the occasion of the issuance of an advisory opinion by the International Court of Justice, which the Assembly had requested of it in resolution ES-10/14, pertaining to the legal consequences arising from the construction of the wall being built by Israel in the occupied Palestinian territory, including in and around Jerusalem. The opinion was clear, specific and comprehensive, and, despite the attempts at political and media disruption which accompanied the issue of the wall, the Court upheld the truth. It made clear that it represents a legal refuge that can be resorted to when politics and military power try to supersede the rule of law.

The Court's opinion is, quite simply, law. Therefore, Israel and the rest of the world must respect and abide by the Court's findings. The United Nations has an ongoing responsibility with respect to the question of Palestine until it is resolved, in all its aspects, in an acceptable manner that is in keeping with international legitimacy.

The Court's opinion has brought to light many illegal aspects that have a bearing on the Palestinian cause. The General Assembly, which requested the advisory opinion from the Court, will decide how it will undertake its responsibilities with regard to the question of Palestine an in general and to the dividing wall in particular, in the light of the legal conclusion that the Court has reached.

The Security Council and the General Assembly have adopted hundreds of resolutions since Israel's occupation of the West Bank and East Jerusalem. Those resolutions consider the territories to be occupied and Israel to be the occupying Power under international law. However, Israel has for more than 37 years rejected the description of the territory as occupied and of itself as an occupying Power.

The Court's conclusion shows that the Palestinian territories occupied in 1967, including East Jerusalem, are indeed occupied territories, that Israel is indeed an occupying Power, and it recalls that international law forbids the annexation of territories through the use or the threat of the use of force.

The Court's opinion has shown that the relevant provisions of international humanitarian law apply to the occupied Palestinian territories, including The Hague Rules of 1907 and the Fourth Geneva Convention of 1949, which the Court declared apply legally to these territories. Israel has no room to argue that it is for Israel itself to implement the Convention. That also applies to the principles of human rights law, especially those stipulated by the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child, as stipulated by the Court.

For decades, the General Assembly has affirmed the right of the Palestinian people to self-determination, as stipulated by the Charter of the United Nations. However, Israel has spared no effort in attempting to marginalize that right through its various practices, starting with the direct and indirect forceful eviction of the Palestinian people from the Palestinian territories occupied in 1967 and continuing with the Israeli settlement policies and programmes in those territories and the construction of the dividing wall on occupied Palestinian territories.

In that connection, the International Court of Justice has shown that the Palestinian people's right to self-determination is non-negotiable and that Israel is violating that right — an obligation *erga omnes* of States — through the Israeli settlements, which the Court unanimously considered to be a violation of international law, and by building the wall on occupied Palestinian territories, including East Jerusalem. The wall's route, as specified by the Israeli Government, will include 80 per cent of settlers in the enclosed area between the wall and the Green Line. According to the Court, that will create a fait accompli and realities on the ground that may become permanent, resulting in a de facto annexation of those occupied Palestinian territories.

Indeed, those conclusions were no surprise. However, political considerations have led some to address the issue of the occupied Palestinian territories in general, and the construction of the wall in particular, on the basis of acceptance of the status quo. That in turn has encouraged Israel to continue to violate the Palestinian people's right to self-determination and to violate international law and international humanitarian law in the occupied Palestinian territories. As had been the case with hundreds of previous United Nations resolutions, Israel accorded no importance to General Assembly resolution ES/10-13 and continued its construction of the wall and the accompanying confiscation and destruction of property, which have made the lives of the Palestinian people in the occupied territories unbearable.

The International Court of Justice showed us that Israel's construction of the wall in occupied Palestinian territories, including East Jerusalem, is illegitimate and in violation of Israel's international legal obligations, including its obligations *erga omnes*. The Court did not accept Israel's claims that legal justifications exist for its illegitimate actions — including its construction of the wall on territories it does not own and in which it has acquired no rights — despite the creative legal terms used to describe those territories.

As the Court found, the law requires that Israel abide by its international legal obligations, put an end to its violations related to the construction of the separation wall on occupied Palestinian territories and immediately restore the status quo ante by removing the portions of the wall already constructed on those territories and repealing the relevant legislation and administrative procedures. Israel must also restore to the Palestinian people all their legitimate rights; it must return all confiscated property to its rightful owners; and it must compensate all those who have been harmed for the losses they have incurred as a result of its illegal actions.

Moreover, the law stipulates that the international community must not support Israel in the violation of its obligations *erga omnes* under international law, such as respect for the right to self-determination and for international humanitarian law. Therefore, according to the Court, the international community must not recognize the illegal situation resulting from the construction of the separation wall in the occupied Palestinian territories, including East Jerusalem. Countries must not help to maintain that illegal situation.

This is not theoretical discourse; rather, it has practical outcomes that countries can adopt to ensure respect for the rule of law and for the relevant principles of the Charter of the United Nations, including the right to self-determination. Moreover, the General Assembly — which requested the advisory opinion — is a forum where the international community can adopt such practical measures. By shouldering its responsibilities with regard to the issue of Palestine and carrying out its duties as stipulated by the Charter, the Assembly can help to put an end to the illegal situation caused by the building of the separation wall and to ensure the implementation of international law as set forth by the Court.

(*spoke in English*)

In recent days, the Arab Group circulated a draft resolution that my delegation intends to submit in due course to the resumed tenth emergency special session of the General Assembly for its consideration, pending the outcome of further discussions among interested delegations. Our objective in pursuing a resolution flows from our belief that the General Assembly needs not only to acknowledge the receipt of the advisory opinion, but also to react positively to the Court's unambiguous conclusions, which — we would argue most strongly — must be reproduced in full in any resolution to be issued by the General Assembly. We also consider it necessary that we lay the foundations for a process of building, subsequently and in a practical manner, upon the advisory opinion should Israel not comply with its legal obligations underscored in the opinion. Compliance would naturally mean that

Israel would have to end its breaches of those legal obligations; cease the construction of the wall in the occupied Palestinian territory, including in and around East Jerusalem; dismantle the parts already built in those areas; repeal the relevant legislative and administrative measures; and repair the damage caused.

Ultimately — forgive me for repeating myself — the opinion is fundamental in its importance for no simpler reason, we believe, than that it has demonstrated to all persons everywhere that, in spite of the realities of political power and expediency, justice, when sought, can still be found. The advisory opinion has furthermore confirmed to the international community that, once again, the cause of the Palestinian leadership and its people is a most just and worthy cause.

Mr. Gillerman (Israel): Let me begin by expressing our sympathy and the sympathy of the people of Israel to the people and the Government of Austria for the passing of that country's former President, Mr. Thomas Klestil, and to the people and the Government of Nicaragua for the recent floods in that country. Israel stands ready to assist in relieving the plight of the Nicaraguan people, as it has assisted people for decades on every continent around the world.

For years, if not decades, the Assembly has entertained the Palestinian representative's attempts to manufacture a virtual reality — an alternate world in which there is but one victim and one villain, in which there are Palestinian rights but no Palestinian responsibilities, and in which there are Israeli responsibilities but no Israeli rights.

This persistent campaign has contributed little to the credibility of the United Nations and nothing to the cause of peace. It has pushed the parties further apart. With each successive partisan initiative, we are left to wonder how the United Nations can contribute to the welfare of both peoples if it sees the suffering of only one.

Last December, despite the reservations of many States, including the members of the Quartet, the International Court of Justice was dragged into that virtual reality. To add the Court to the list of United Nations organs harnessed to this one-sided agenda and to extend the immoral majority from this Hall to The Hague, a grotesquely distorted question was devised that placed the response to terrorism on trial, but ignored the terrorism itself. The hope was to create so perverted a process that the Court would be compelled to ignore the suffering of innocent Israelis from terrorism and the obligations of the Palestinian side to prevent it. Last Friday, sadly, that hope was realized.

The Israeli and Palestinian peoples do not live in that reality. While States are engaged in studying the advisory opinion, Israel is burdened with the heavy responsibility of saving the lives of its citizens from the most brutal and evil terrorist campaign. We live in the reality in which, just two days after the opinion was issued, terrorists belonging to Yasser Arafat's Fatah faction attacked a commuter bus in Tel Aviv, killing one woman and injuring 34 others. This is a reality where, after such a horrific attack, Arafat can make the sickening accusation that Israel orchestrated the murder of its own citizens and have it pass without comment. This is the reality in which we are seeking out partners in peace and trying — despite all the difficulties — to create conditions in which both sides can live up to their responsibilities and achieve their rights. The path to peace does not lie in The Hague or in New York. It lies in the region; it lies in Ramallah and Gaza, from where the terrorism is directed.

We can all agree that our goal must be a situation in which no fences between Israelis and Palestinians are necessary, but delegates are deceived if they think, even for one second, that that goal can be attained by considering the obligations of only one side.

As the General Assembly will recall, Israel, together with a large number of States, did not support the request for the advisory opinion. Like the members of the Quartet and countries such as the United Kingdom, Cameroon, Italy, Canada, Australia, Germany, the Netherlands and others, we submitted a detailed document to the Court noting that the request was inappropriate, a misuse of the advisory opinion procedure and damaging to the road map. For its part, Israel could not grant legitimacy to this tainted procedure or be a fully engaged party in what we knew to be a counterproductive and harmful initiative.

We continue to believe that it was wrong for the General Assembly to put the Court in that position. Simply put, the Assembly put the wrong question before the wrong body, and in so doing made it more difficult for the Court, even with the best will in the world, to reach a fair, balanced and helpful response. As noted by Judge Kooijmans of the Netherlands, by politicizing the Court, the Assembly turned that

judicial organ into an actor on the political stage. By being drawn into a partisan procedure, the Court has become the latest victim of the Palestinian political campaign, and it is the worse for it. We believe that this process produced a dark day for the International Court of Justice and a dark day for the United Nations. Do not let that darkness reign here today.

All those States that expressed concern about this misuse of the advisory process should now be wary of allowing this process to dictate the international agenda. There are already worrying indications that the request last December was a test case — a precedent for further abuse of the Court. It would be a grave mistake to allow this essentially political manoeuvre to undermine the prospects for progress on the ground, and it would be equally dangerous for the Assembly's actions to be viewed as rewarding such a misguided and politically motivated recourse to the Court.

Key States also warned that isolating one issue out of a complex conflict reserved for political negotiations could only lead to a distorted result. They warned of the lack of legitimacy inherent in a process that placed the victims of terrorism on trial, but spared the murderers of any judicial scrutiny. And they warned that any opinion reached as a result of such a skewed process could only lead to politicization and the misrepresentation and misuse of the law with ramifications well beyond the confines of our conflict. These warnings were all too real, but they were not heeded.

Israel has respect for the institution of the International Court of Justice and we believe in its ideals. We represent a people that knows all too well the cost of living in a society in which individuals are not protected by the balanced application of the rule of law. That is perhaps why we are especially disappointed by the exploitation of the Court in this case. We will not be the first State, and certainly not the last, to have differences with the positions expressed in an opinion of the Court, its historical and factual analysis or central aspects of its reasoning. We note that other States too, as well as several judges on the Court, have serious disagreements with key portions of this opinion. This is not the time or the place to explain those differences in detail, but we are compelled to address a number of aspects of this process that bear directly on the deliberations of the Assembly.

Israel is dismayed that, in the 60-plus pages of the opinion, it was deemed inappropriate to seriously address the brutal terrorism that innocent Israeli civilians are facing or the ongoing refusal of the Palestinian leadership to bring that terrorism to an end. Those crimes are the very reason that the fence is being erected, and the Court's silence in this regard is deafening. While realizing the constraints placed on the Court by the distorted question and the partial dossier placed before it, we find this glaring omission legally inexplicable and morally inexcusable.

We note the deep concerns expressed by Judge Higgins of the United Kingdom, Judge Owada of Japan and others about the failure to declare in the clearest terms that Palestinian terrorism directed at Israeli civilians is a violation of the basic tenets of international humanitarian and human rights law. We agree that this failure fundamentally undermines the balance and credibility of the opinion.

Incredibly, the value of property has been elevated by this twisted process over the value of human life. It has become more about real estate than about real life.

There has been much talk about property, especially about this property – this fence — which is totally removable and totally reversible. But there has been no mention of another kind of property: the graves of the dead — lives taken by terrorism, totally extinguished, irreversibly. There has been much talk about rights. Yes, the human rights of all people, of Israelis and of Palestinians, are sacred and important. But there has been no mention of the most important and basic human right of all: the right not to be murdered — the right to live.

We also share the concerns of some of the judges on the Court regarding the selective reliance on facts and secondary materials and a historical presentation which, to quote Judge Higgins of the United Kingdom, was "neither balanced nor satisfactory" — a presentation that addresses the League of Nations Mandate but ignores the Mandate's express recognition of the Jewish people's right to self-determination in their ancient homeland; a presentation that addresses the wars between Israel and its neighbours as if they materialized out of thin air, rather than as a result of deliberate acts of aggression designed to wipe Israel off the map.

We share, too, the deep reservations about a narrow statement in the opinion that could read as

though it questions the right of States to self-defence against terrorism, despite all the evidence in law, Security Council resolutions and State practice to the contrary. There is no justice and no law in such an interpretation. It is not a rule that States can live by. It is, tragically, a rule that people die by.

Israel is occasionally urged to put more faith in international institutions and actors, to trust in their objectivity and their fairness. We are told to have faith that the political manipulation of their noble goals will not be tolerated. What will we tell our citizens today?

Israel recognizes that, like every measure that tries to prevent acts of terrorism emanating from civilian areas, the security fence raises complex legal and humanitarian issues. Accordingly, the fence and its route are subject to a process of constant review and change. This process includes giving every affected individual, Palestinian or Israeli, the right to petition Israel's Supreme Court, and numerous such petitions are pending. Indeed, Israel's Supreme Court is one of the few courts in the world, and certainly the only one in the region, that vigorously applies international law to examine the domestic actions of its own Government. It is a fiercely independent judicial institution that has earned the respect of jurists and lay people throughout the world. And it is probably the only court in the entire Middle East in which an Arab can challenge his Government's actions and be assured of justice, rather than jail.

On 30 June, in response to one such petition, Israel's Supreme Court issued a landmark ruling on the security fence. Relying on specific provisions of international humanitarian law, the Israeli Supreme Court recognized Israel's authority to erect a fence as a defensive measure against terrorist attacks. It affirmed also that, had the fence been built along the so-called Green line — an arbitrary line that has never served as an international border — that itself would have been evidence that the route was being determined by inappropriate political considerations rather than justifiable security ones.

At the same time, the Israeli Supreme Court stressed that the fence must be carefully balanced against the rights of those affected by it. The Israeli court, in a thorough and rigorous judgement, laid out a detailed proportionality test by which such a balance could be reached. It went on to find, by reference to that test, that sections of the fence required re-routing.

There are, of course, important differences between the ruling of the Israeli Supreme Court and the International Court of Justice's advisory opinion. The Supreme Court was petitioned by Palestinians and Israelis who wanted practical solutions on the ground; the International Court of Justice was asked a question as part of a political and manipulative campaign. The Israeli Supreme Court sought to find a balance between competing rights; the International Court of Justice was asked only about the rights of one side. Perhaps most importantly, the Israeli Supreme Court had before it detailed and specific evidence, including witness testimony, on all aspects of routing, its security rationale and associated humanitarian effects; the International Court of Justice was supplied only with partial, outdated and often misleading information. Finally, of course, while the opinion of the International Court is advisory only, the Supreme Court ruling is binding upon Israel.

As always, Israel, as a country that respects the rule of law, will fully comply with the decisions of its courts. Following the judgement of the Israeli Supreme Court, the Government announced that it would not only re-route those parts of the fence that were the subject of the petition, but re-examine the entire routing of the fence so as to ensure that it complies with all the requirements of international law. That re-examination has already led to a decision to re-route large portions of the fence. As Israel's Court declared, and as the Government of Israel fully accepts,

> "Only a separation fence built on a base of law will grant security to the State and its citizens. Only a separation route built on the path of law will lead the State to the security so yearned for."

Yet, in the virtual reality created by the General Assembly's request, none of those facts was taken into account. Despite Israel's official objections, there was extensive reliance on a dossier that not only contained inaccuracies and critical omissions but misrepresented Israel's legal position. The Palestinians and certain other parties appearing before the Court grossly distorted the nature of the fence, its purpose and its actual route. No account was taken of the terrorist threat; no account was taken of the significant changes that continue to be made to the route of the fence; no account was taken of the binding decisions of Israel's Supreme Court; and no account was taken of the fact that humanitarian arrangements have been vastly enhanced and continue to be improved.

The views expressed by the International Court of Justice do not relate to the legal authority to erect the fence in principle, but to a "specific course" which the Court has presumed to exist by relying primarily on the selective and one-sided information with which it was supplied. The Court reached its opinion on this specific question "on the material before it". But the material before it referred, in large measure, to a fence that does not exist. Indeed, even if the information before the Court had been accurate when presented, it does not reflect the actual route of the fence that is under consideration today.

Examining the legality of the route demands a detailed proportionality assessment. It requires specific knowledge of topographical, security, environmental and humanitarian considerations at each section of the fence. It requires a thorough appreciation of the precise scope of terrorist attacks that Israelis face and the manner in which the specific route chosen has proven an effective means of thwarting those attacks.

Such analysis cannot be based solely on reports about the alleged humanitarian impact of the fence, which are themselves outdated and alarmingly inaccurate. As Judge Buergenthal notes, in the absence of such a detailed and serious examination, it is simply impossible to reach definitive legal conclusions.

We do not believe that so complex an issue can be addressed with so little opportunity for forensic examination. We do not believe that definitive conclusions can be reached on so obviously inadequate an evidentiary record. The opinion of the Court does not rule out the authority to erect a fence in the West Bank. Indeed, it recognizes that military exigencies and security imperatives could justify the erection of such a fence, but it fails to properly examine those exigencies and its opinion relates only to a phantom route that bears little resemblance to the route actually under review. It should be considered accordingly.

We are not impressed by lectures from Palestinian spokesmen about respect for the rule of law. We have all witnessed first hand the extent of the Palestinian leadership's respect for law in its support for a brutal campaign of terrorism that violates every basic legal norm, while it rejoices over the murder of innocent citizens in terrorist attacks — not only in Israel, but around the world — or plunders international donor money intended to benefit its own people.

We have heard similar self-righteous rhetoric from other regimes in our region — those enraged when Israel seeks to protect itself under extremely difficult conditions, but unable to muster a word of condemnation for the systematic and shocking ethnic cleansing under way in the Sudan or the violations of basic rights and freedoms in their own countries. This rage and concern, this spirited defence of the rule of law, would carry a little more conviction if it were a little less self-serving. For too many regimes in the region, this declared adherence to the rule of law is advanced only when politically expedient. The cause of peace and the lives of people in the region would be far better served if those States actually held themselves to the standard to which they demand Israel alone adhere, and to which Israel does adhere.

For all those that speak so hypocritically of compliance, the rule of law and outlaw States, let me say this. Are there laws for Israel and different laws for everybody else? We await to hear a supreme court in any of these regimes call on its authorities to alter their security plans, let alone see the authorities abide by such a ruling. We await an advisory opinion or even a single United Nations resolution that addresses the legal obligations of those regimes to end terrorism, stop hate-filled incitement and respect the human rights of their own citizens, let alone those of other States. Those regimes have the gall to speak of sanctions for a measure that saves lives. We await sanctions for the terrorism they sponsor, which takes lives. If those regimes, or the Palestinian Authority — where only this morning armed militants kidnapped the head of its own police force — are entitled to lecture anyone about the rule of law or accuse others of being outlaws, we have indeed reached a point where the inmates are running the asylum.

Israel recognizes that it has responsibilities, but it is not alone. The Palestinian side calls on Israel to comply with a non-binding opinion. We call on Palestinians to comply with their binding legal obligations. There is, after all, one straightforward measure that would lead to the removal of the fence — and it is not more resolutions adopted in United Nations halls. It is, simply put, for the Palestinian side to abandon terror as a strategic choice and to comply once and for all with its obligations to fight terrorism and incitement. As controversial as the fence may be, one issue is beyond controversy. The terrorism that made the fence necessary is not only a grave violation

of international law, but the enemy of the Israeli and Palestinian peoples, and its eradication is an indispensable step to lasting peace. As I have repeatedly stated, and as many members know, this is the Arafat fence. It is the fence that Arafat built. Were it not for Arafat's terrorism, there would be no fence.

Throughout this process, there have been excited attempts to present the advisory opinion as something that it is not — a binding verdict that must be complied with and that necessarily dictates the action of political organs of the United Nations. That assertion is simply inconsistent with the actual legal status of such opinions as non-binding under international law and runs counter to the history of their subsequent treatment by United Nations organs. The record of United Nations bodies is replete with examples of States, from every continent and regional group, that have taken serious issue with aspects of an advisory opinion. Many States have voted against resolutions that, like the draft resolution before us today, take the advisory opinion out of their political context. In some cases, the Assembly has chosen merely to take note of, rather than expressly endorse, the opinion. And in most cases, the United Nations membership has recognized that its political organs are compelled to take broader political and strategic considerations into account and should not be limited in their consideration to the narrow treatment of isolated legal issues.

Given the controversy surrounding the request for the advisory opinion, every one of those considerations applies in this case. If the number of States objecting to this abuse is not enough; if the serious criticism of the opinion by numerous judges on the Court and by a growing number of legal experts around the world is not enough; if the obviously self-serving nature of the present draft resolution is not enough, then surely the imperative of advancing the road map should itself allow for no other conclusion.

In the months since the opinion was requested, one thing has become abundantly clear: the fence works. In those places where the fence has been erected, it has succeeded in making it far more difficult for terrorists to take innocent life and sabotage the peace process. Scores of suicide attacks have been thwarted, the latest of which just two days ago. Hundreds of lives have been saved. There has been a dramatic reduction of over 90 per cent in successful terrorist attacks, a 70 per cent reduction in citizens killed and an 85 per cent reduction in the number of wounded — all of which can be attributed directly to the security fence. Listen for a moment to Tawfiq Karaman, City Manager in Umm el-Fahm, who said: "Allah be blessed, the fence ended the parade of terrorists through this city". Listen to Sami Masrawa, an Israeli Arab injured in Sunday's bus bombing, who said: "A month ago I went to protest the fence; now I believe it can only strengthen us". And as Israel is able to protect its citizens — Israeli and Arab alike — by more passive means, it has also been possible to remove road blocks and withdraw troops from Palestinian areas, improving security, humanitarian and economic conditions for thousands of Palestinian residents.

By closing the avenues of terror, we can open the path to peace. As the Quartet and many other States have recognized, there is now a genuine chance to restart the road map peace process as a result of the disengagement plan. That opportunity has been created by the security benefits of the fence. It must not be squandered. The fence, and its actual, rather than imagined route, poses no threat to the emergence of a viable and democratic Palestinian State as part of the road map process. Indeed, with its help in taking terrorism out of the equation, a negotiated two-State solution becomes possible.

As Israel has repeatedly declared, the fence does not affect the legal status of the territories, and as has been done in the past, it can be moved or removed to accord with any political settlement. As Prime Minister Sharon has pledged, the fence is a security rather than a political barrier, temporary rather than permanent, and therefore will not prejudice any final status issues, including final borders. Above all, the fence is reversible. The taking of lives by terrorism is not.

We would urge representatives, rather than accepting every facile allegation as fact, to see not just the response to terrorism, but the terrorism itself. The Assembly has already expressed itself on the issue of the security fence, but it has yet to address the terrorism that necessitated it. It is time for the Assembly to ask some different questions. And it is time for members to ask themselves, seriously, what steps can now be taken to bring the parties closer together, not to push them even further apart.

The General Assembly does, indeed, have a choice today: to correct the error made last December, or to compound it. The Palestinian side hopes that the

Assembly will preserve the comic-strip narrative of victim and villain that they have laboured so intensively to create. That is why they were so angered four days ago when the Personal Representative of the Secretary-General had the audacity to suggest that both sides had to live up to their obligations. But that comic-strip story can produce only paper; it cannot produce progress and it cannot produce peace. By ignoring Palestinian obligations, the Assembly only sets back the Palestinian cause. By reinforcing a sense of privilege without a sense of responsibility, the Assembly adopts a patronizing agenda that undermines the creation of a democratic Palestinian State at peace with its neighbours in the context of a permanent settlement. Only the political process laid out in the road map, which sets out mutual rights and mutual obligations, can achieve real results. The Assembly must decide whether it lives in the virtual world created by Palestinian draft resolutions or in the real world. It cannot live in both.

The advisory opinion of the International Court of Justice took place in a virtual reality, but it did not take place in a vacuum. On the ground, the launching of a bold and serious initiative of disengagement from Gaza and parts of the West Bank carries the potential to re-energize the peace process. That is where our attention must be focused. We are currently engaged in consultations with States in the region and with Quartet members in order to create conditions in which the disengagement plan can help facilitate genuine progress and the realization of a viable two-State solution in the context of the road map.

Surely we can agree that this is the goal: an end to violence, terrorism and incitement, as required by the very first clauses of the road map; an end to suffering on both sides; and a commitment to peace, dignity and prosperity for both peoples, based on mutual recognition and mutual compromise. All of that can come about only by a fulfilment of the obligations agreed to by both sides, so that temporary fences of security can quickly be replaced by permanent bridges of peace.

If the General Assembly wishes to make a relevant and constructive contribution to this noble endeavour, we must keep our eye on that prize. We must avoid adopting one-sided, diversionary and divisive resolutions, inspired by the partisan interests of one party to the conflict, and thus, of necessity, deficient in their impact and their claim to legitimacy.

The barrier between Israelis and Palestinians is not the security fence, but the terrorism that made it necessary. Were it not for that terrorism, a viable two-State solution would have emerged long ago. Palestinian terrorism seeks not the end of occupation, but the end of Israel. The events of recent years and the hate-filled rhetoric of the terrorist ringleaders tell us as much. As long as the Assembly averts its gaze from that stark reality, it does the cause of peace a great disservice. The people in the region deserve, and in fact demand, better. We urge the Assembly to heed their call.

The President: I now give the floor to the Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People.

Mr. Badji (Senegal) Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People (*spoke in French*): I would like first of all, on behalf of my country, Senegal, to join in the tribute to the memory of Mr. Thomas Klestil, President of the Republic of Austria, who passed away a few days ago. We would like to express our deepest condolences to the friendly people of Austria, to their Government and to the family of Mr. Klestil.

We would also like to express sentiments of sympathy, friendship and solidarity to Nicaragua, which has suffered from serious flooding.

I am speaking to the General Assembly at its resumed tenth emergency special session in my capacity as Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People. The Committee joins a large number of Member States, intergovernmental organizations and eminent political figures in welcoming with satisfaction the advisory opinion of the International Court of Justice regarding the legal consequences of the building of a wall in the occupied Palestinian territories, including East Jerusalem.

The clear, exhaustive and detailed decision, which carried a strong message from the Court, was adopted by an overwhelming majority. It represents an ineluctable juridical, ethical and political directive with which all States, including Israel, must conform and to which they must adhere.

The Court's decision clearly confirms the position of the majority of the international community that the construction by Israel of a wall in the occupied Palestinian territories, including East Jerusalem, is

illegal and constitutes a violation of international law. The wall is a serious obstacle to the exercise by the Palestinian people of their right to self-determination, and constitutes a failure on the part of Israel to meet its obligation to respect that right.

The ordeals unjustly endured by thousands of Palestinian prisoners in the enclaves created by the wall are well known and have been described in many documents. Palestinian lands have been confiscated, houses razed and communities dislocated, with entire populations condemned to poverty and despair. Severe restrictions and a grave disruption of daily activities further increase the difficulty of life under Israeli occupation.

The Committee has always recognized that the Israeli Government has the responsibility and the duty to protect its citizens. However, as the Court notes, the right of legitimate defence cannot justify the illegality of the wall's construction in the occupied territory. The Court unambiguously affirms that Israel is obligated to halt the work of constructing the wall, to dismantle it and to repair all the damage caused by the building of that structure. It also declares that all States are duty-bound not to recognize the illicit situation resulting from the wall's construction and not to provide any aid or assistance that would contribute to the maintenance of that situation. The international community must do everything in its power to ensure that the law will prevail and that the Court's decision will be effective.

Moreover, the Committee notes that the Court also reaffirms that Israel's policy of building settlements, as well as the wall, tends to alter the territory's demographic composition and violates the provisions of the Fourth Geneva Convention and of the relevant resolutions of the Security Council. We wish to observe that the Council, in its resolution 446 (1979), adopted in March 1979, determined that Israel's policy and practice of establishing settlements in the occupied territories have no legal validity and seriously hamper the establishment of a general, just and lasting peace in the Middle East.

Today, 25 years later, we note that Israel has repeatedly flouted the provisions set forth in Security Council resolutions calling upon it to put an end to that practice. Disregarding those provisions, Israel has disseminated more than 400,000 settlers throughout the occupied Palestinian territory. By illegally constructing the wall, it has created an irrational situation on the ground that makes the establishment of a neighbouring Palestinian State practically impossible and that seems to predetermine the outline of the future borders between Israel and such a Palestinian State. The crucial question of borders must be settled only within the framework of political negotiations between Israelis and Palestinians. Only a negotiated settlement can establish a lasting peace between the two peoples and in the rest of the Middle East.

Last week, Member States and intergovernmental organizations welcomed, in the opinion of the International Court of Justice, a significant decision that will remain a historic event. That opinion of the Court is indeed historic, not only because of its urgent message, but also because it is the first time that this main body and supreme judicial forum of the United Nations is pronouncing on a substantive problem relating to the question of Palestine. The International Court of Justice has thus joined other main United Nations organs that are fully committed to finding a positive solution to this long and painful conflict.

The Committee is of the view that the advisory opinion, if applied with far-sightedness and determination, can help to restore the political dialogue and to relaunch the negotiations between the two parties.

The Committee reaffirms its long-standing position that the United Nations must continue to shoulder its permanent responsibility with regard to the question of Palestine until that question is satisfactorily resolved in all its aspects, in conformity with the relevant United Nations resolutions and in respect for international law, and until the inalienable rights of the Palestinian people are fully restored.

The Committee is convinced that the advisory opinion of the International Court of Justice offers the international community a unique opportunity to intensify its efforts and to accelerate the process aimed at helping the Palestinian people to exercise their inalienable rights. Progress has been slow, lengthy and difficult for the Palestinian people. It is high time that they be able to establish their own independent and sovereign State and to live side by side with Israel within secure and recognized borders, as envisaged in the road map.

The President: I now give the floor to the representative of Malaysia, speaking on behalf of the Non-Aligned Movement.

Mr. Radzi (Malaysia): Let me begin by joining previous speakers in expressing, on behalf of the Non-Aligned Movement, our deepest condolences to the people and the Government of Austria on the passing of the former President Thomas Klestil. We wish also to express our sympathy and solidarity to the Government of Nicaragua on the loss of life and destruction of property caused by the recent flood.

On behalf of the Non-Aligned Movement, I wish to thank you, Mr. President, for convening the resumed tenth emergency special session of the General Assembly. The convening of this meeting is extremely important in order to enable the General Assembly to react immediately to the advisory opinion on the legal consequences of the construction of a wall in the occupied Palestinian territory, rendered by the International Court of Justice at The Hague on 9 July 2004. We thank the Court for its advisory opinion.

The advisory opinion is a significant milestone in international law and, in particular, in our efforts to bring to an end the sufferings and dire humanitarian consequences inflicted upon the Palestinian people. The Non-Aligned Movement considers the advisory opinion to be an independent and impartial pronouncement on the legal consequences arising from the construction of the wall by Israel, based in the rules and principles of international law, including the Fourth Geneva Convention of 1949 and the relevant General Assembly and Security Council resolutions. The General Assembly may recall that the Non-Aligned Movement stated its position on the construction of the Israeli wall during the previous two resumptions of the tenth emergency special session of the General Assembly, on 20 October and 8 December 2003. The Non-Aligned Movement maintained the following.

First, the wall was illegal and must be dismantled, and its further construction must be immediately discontinued.

Secondly, the wall — sections of which are constructed deep inside the occupied Palestinian territory — departs from the Armistice Line of 1949 and therefore is illegal under international law.

Thirdly, the wall gravely violates the Fourth Geneva Convention in that it involves the illegal, de facto annexation of large areas of Palestinian land and resources, the transfer of a great number of Palestinian civilians and the further deprivation of their human rights, resulting in further dire humanitarian consequences among an already-deprived people.

Fourthly, the wall presents a major obstacle to the implementation of the road map as it undermines the creation of a viable, contiguous Palestinian State and thereby diminishes the possibility of realizing the two-State solution.

Finally, the wall could trigger the end of the Middle East peace process, since it possesses the potential of provoking further unprecedented violence among the severely oppressed Palestinian people in their desperate effort to survive under the brutal oppression of the Israeli Government.

The conclusions and observations made by the International Court of Justice in its advisory opinion have confirmed what the Non-Aligned Movement has stated all along. The Court unanimously found that it has jurisdiction to give the advisory opinion requested by the General Assembly and, by fourteen votes to one, the Court decided to comply with the request for an advisory opinion.

The Court has replied to the question put to it by the General Assembly in the following manner: first, by fourteen votes to one, that

> "the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated regime, are contrary to international law" (*A/ES-10/273, p. 53)*;

secondly, by fourteen votes to one, that

> "Israel is under an obligation to terminate its breaches of international law; it is under an obligation to cease forthwith the works of construction of the wall being built in the Occupied Palestinian Territory, including in and around East Jerusalem, to dismantle forthwith the structure therein situated, and to repeal or render ineffective forthwith all legislative and regulatory acts relating thereto, in accordance with paragraph 151 of [the] Opinion" (*ibid.*);

thirdly, by fourteen votes to one, that

> "Israel is under an obligation to make reparation for all damage caused by the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem" (*ibid.*);

fourthly, by thirteen votes to two, that

> "All States are under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction; all States parties to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 have in addition the obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention" (*ibid.*);

and finally, by fourteen votes to one, that

> "The United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated regime, taking due account of the present Advisory Opinion"(*ibid., p. 54*).

The conclusion by the International Court of Justice to the legitimate question posed by the General Assembly through its resolution ES-10/14 is a clear testimony of and further confirms the conviction of the General Assembly, as contained in its resolution ES-10/13, and that of the majority of members of the community of civilized nations that the wall is in departure of the armistice line of 1949 and is in contradiction to relevant provisions of international law.

The Non-Aligned Movement wishes to commend and express its appreciation to the Secretary-General for his incisive and informative report, prepared pursuant to General Assembly resolution ES-10/13, as contained in document A/ES-10/248 of 24 November 2003, which has enormously helped our deliberations and, to a large extent, I believe, those of the International Court of Justice on this important question. In this context, I wish to recall the salient elements of the conclusions in the Secretary-General's report, as follows.

First, Israel is not in compliance with the General Assembly's demand that it stop and reverse the construction of the wall in the occupied Palestinian territory. Secondly, the construction of the wall in the West Bank is a deeply counterproductive act. The placing of most of the structure on occupied Palestinian land could impair future negotiations and damage the longer-term prospects for peace by making the creation of an independently viable and contiguous Palestinian State more difficult. Finally, the security of Palestinians and Israelis alike can be assured only through a just, comprehensive and lasting peace settlement based on Security Council resolutions 242 (1967) and 338 (1973).

As we revisit this question at this resumed tenth emergency special session, it is clear that Israel has chosen not to comply either with the demand of the General Assembly, which was clearly pronounced in resolution ES/10-13, or with the advisory opinion. As of today, Israel has neither stopped nor reversed the ongoing construction of the wall, nor dismantled it. On the contrary, and in defiance of the advisory opinion, as well as the views of the international community, Israel has declared its intention to continue with the construction of the wall and to complete it by 2005 as scheduled. Israel declared that it will not accept the advisory opinion on the very same day it was published, in flagrant disrespect for the highest judicial organ of the United Nation and to the judges of the Court who have solemnly pronounced their opinion.

The reaction of Israel is a clear demonstration of its continuing intransigence and defiance of not only the opinion of the Court, but also that of the general membership of the United Nations. Therefore, we urge this Assembly to act to bring Israel to recognize the seriousness of the matter and to fully observe the advisory opinion. The proposed draft resolution before us is intended to be an effort towards that end.

The Non-Aligned Movement reaffirms that a just, comprehensive and lasting settlement to the conflict can be achieved only on the basis of the implementation of Security Council resolutions 242 (1967) and 338 (1973). In addition, serious efforts must be undertaken to achieve the two-State solution that would ensure the creation of a sovereign, independent and viable State of Palestine and the existence of Israel, both living side by side in peace and security, within secure and recognized borders, as envisaged in Security Council resolutions 1397 (2002) and 1515 (2003).

The Non-Aligned Movement believes that this Assembly should muster the necessary political will, wisdom and courage to decisively respond to the

question that is now before us. We remain fearful of the inevitable damaging and dangerous consequences if the wall were to continue along its planned route, in defiance of General Assembly resolution ES-10/13 and the advisory opinion. The Non-Aligned Movement firmly believes that the adoption of the proposed draft resolution during this tenth emergency special session would send a strong and clear message to Israel. It would also continue to demonstrate in a tangible way the concern and sympathy of the General Assembly and the international community for the dire plight of the Palestinian people, who have been severely disadvantaged and deprived by the existence and continued construction of the wall, confining them as virtual prisoners in their own homeland behind the wall, in addition to the trenches, fences, security roads and blockades they have had to put up with all these years. It would be most unfortunate and tragic indeed if the General Assembly were to fail in its responsibility to uphold justice for the Palestine people and to promote peace between them and the Israelis. Justice must be done. It must be done expeditiously, as time is running out.

Mr. Chaudhry (Pakistan): I should like, on behalf of the Government of Pakistan, to convey our condolences to the Government and the people of Austria on the sad demise of the President, the late Mr. Thomas Klestil.

We also extend our sympathies to the people and the Government of Nicaragua on the tragic loss of life and property resulting from the recent floods there.

We have returned to this Hall to reflect upon the advisory opinion of the International Court of Justice on one grave aspect of the unfortunate and disturbing situation in the Middle East.

The Court has confirmed what the international community has widely believed about the conduct of Israel in the occupied territories, particularly with reference to its uninhibited construction of the separation wall.

The advisory opinion of the International Court of Justice finds the construction of the separation wall contrary to international law. It emphasizes the obligation of all States not to recognize the illegal situation created by the construction of the wall. The Court has ruled that Israel is under an obligation to cease forthwith the construction of the wall and to dismantle the structures therein. The opinion also determines the obligation of Israel to make reparations for the damage caused to affected persons by the construction so far. The opinion states that the United Nations, especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall.

The illegality of the acquisition of territory by the threat or use of force is clearly established in the Charter and in resolution 2625 (XXV). Resolution 2625 (XXV) also outlines the principles of equal rights and self-determination of peoples. It is clear that Israel is in violation of all of those principles.

The advisory opinion further confirms Israel's persistent violations of the Fourth Geneva Convention, under which the Palestinian people are protected persons. Israel's policy of settlement-building in the occupied territories is a glaring example of its defiance of the Convention.

The advisory opinion of the International Court of Justice clearly shows that Israel — and, indeed, all other States which are in occupation of foreign territories and peoples — have no legal or moral grounds for the construction of such walls and fences in territories under their occupation.

In addition to being illegal, the separation wall in the occupied Palestinian territories will cause enormous humanitarian suffering for the affected Palestinian people. In his report of September 2003, the Special Rapporteur of the Commission on Human Rights calculated that at least 210,000 Palestinians will be affected by the wall. According to him, Palestinians living between the wall and the Green Line will be effectively cut off from their farmland and work places, schools, health clinics and other social services. This is likely to lead to a new generation of refugees or internally displaced persons. The number of internally displaced Palestinians is already increasing due to the Israeli campaign of house demolition in the occupied territories.

The real issue is that for over three decades Israel has remained in illegal occupation of the Palestinian territories and has suppressed the legitimate right of the Palestinian people to self-determination. History bears witness to the fact that the use of force, separation walls and wire fences have never been able to crush the legitimate aspirations of the people under occupation. Permanent security can be established only

by respecting those aspirations, not by repressive tactics, assassinations, economic blockades and collective punishment.

The construction of the wall will impede the realization of the road map, which is designed to bring permanent peace and security to the Middle East. The Secretary-General has described the separation wall and the settlements as serious obstacles to the achievement of the two-State solution. The Secretary-General has further remarked that the wall threatens the future establishment of a viable and independent Palestinian State.

It will not be possible to establish a viable Palestinian State — as envisaged in the Quartet's road map — in the Bantustans that will be created by the separation wall. Occupation Powers should not be allowed to create faits accomplis on the ground and seek the settlement of territorial disputes on that basis.

Israel has a real opportunity to demonstrate its commitment to long-term peace in the Middle East by accepting the advisory opinion and implementing the obligations arising from it in good faith. That would go a long way towards building confidence in an environment marked by deep distrust. It would also enhance the prospects for a revival of the peace process.

For its part, the international community has an opportunity to uphold the principles of justice and the rule of law. The international community should ask the Government of Israel to comply with its legal obligations as determined in the advisory opinion. Our clear opposition to the persistent violation of international law is essential for rescuing the peace process and bringing the parties back to a full and faithful implementation of their commitments under the road map, which should lead to the realization of the vision of two States, Israel and Palestine, living side by side in peace and security within recognized borders.

Mr. Gopinathan (India): I should like to convey our deep condolences to the Government and the people of Austria on the passing of President Klestil.

We join others in conveying our sympathies to the Government and the people of Nicaragua for the recent floods and the resultant loss of life and damage to property.

We welcome the opportunity to participate in this meeting of the resumed tenth emergency special session of the General Assembly to consider the advisory opinion rendered by the International Court of Justice in the case concerning the legal consequences of the construction of a wall in the occupied Palestinian territory.

We have noted that, in its advisory opinion, the International Court of Justice has ruled that the Israeli separation wall in occupied Palestinian territory is contrary to international law and should be dismantled. We call on Israel to take into account the advisory opinion of the International Court of Justice, in keeping with overwhelming international opinion on the matter and with a view to its early implementation.

The outbreak of violence in West Asia since September 2000 has claimed over 3,500 Palestinians and close to 1,000 Israeli lives, leaving countless more injured, physically and otherwise. Israel's policies of closure, containment and curfew in the occupied Palestinian territories have not brought the two sides any closer to a settlement of their dispute. On the contrary, they have only exacerbated the plight and suffering of the Palestinian people and fuelled the violence afflicting the region.

The Secretary-General's Special Coordinator for the Middle East Peace Process stated recently that the impact of the conflict on the population goes beyond deaths and injuries; the violence also affects the economies on both sides and the living conditions of Israelis and Palestinians alike, spreading the misery further and deeper. He quoted a recent World Bank report detailing the misery prevailing in the Palestinian territories, which describes the recession as the worst in history. He reports that the humanitarian situation in the occupied Palestinian territories continues to be severe, with unemployment at 28 per cent and half of the Palestinian population in the territories living below the poverty line.

India has maintained consistently that the only solution to the ongoing violence lies down the path of political dialogue and reconciliation. The absence of any progress in the political process is a matter of considerable concern. There is, however, no alternative but to persevere in the search for a peaceful solution. Recent opinion polls, both in Israel and in the Palestinian territories, indicative of widespread public opinion in favour of peace and reconciliation are signs of optimism that both the Government of Israel and the Palestinian Authority should heed and exploit.

Unfortunately, both sides have made no progress on their core obligations in the implementation of the Quartet road map. India calls upon the parties to fulfil their obligations under the road map, which, for the time being, represents the only framework towards attaining peace.

Mr. Al-Bader (Qatar) (*spoke in Arabic*): I am grateful to you, Mr. President, for convening this meeting to discuss the advisory opinion of the International Court of Justice regarding the wall of separation being built by Israel.

I would like to begin by expressing our condolences to the Government and the people of Austria on the death of President Thomas Klestil. I also wish to express our condolences to the Government and the people of Nicaragua on the losses suffered as a result of the recent flooding in that country.

On 9 July, the International Court of Justice handed down an advisory opinion to settle the question of the wall of separation from the West Bank that Israel began to build two years ago, a wall that crosses the border with the West Bank in many places. The International Court of Justice determined that the wall is illegal and that it violates international law. The Court also said that Israel's borders should return to where they were in 1967. Moreover, the Court has said that the building of the wall has had a negative impact on thousands of Palestinians, and that it seriously imperils their interests.

The Court also rejected any justification for Israel's building of the wall. The Court stated that, in constructing the wall, Israel was in violation of international law. The Court also found that the wall was not being built to prevent Palestinian infiltration into Israeli territory but that it is designed to encompass the settlements built on the West Bank after the 1967 war.

We would like to emphasize that we did not protest when construction began, as the wall then generally followed the Green Line, although it did stray into Palestinian territory at some points.

The International Court of Justice was unambiguous as to the illegality of the wall of separation. It called upon Israel to take steps to halt construction, to dismantle what has already been built and to compensate those who have been harmed. The international community was also called upon not to recognize any result of the building of the wall.

The International Court of Justice confirmed the illegality of Israeli settlements built on Palestinian territory occupied since 1967, including in East Jerusalem. Of course, the Court's opinion is an advisory one that is not binding under international law. Nevertheless, given the stature of the Court, it is a very important advisory opinion. It is also important in the context of international law and vis-à-vis the Charter of the United Nations. No Member of the United Nations may flout it. The opinion must be taken into consideration. It nullifies Israeli occupation and confirms its illegality. It also confirms the illegality of Israeli control over occupied Palestinian territory, including East Jerusalem. The Court also refers to the illegality of the separation wall being built on the West Bank, as well as on other occupied Palestinian land.

This is a victory for international law. We call upon Israel to respect the opinion and not to continue its practice of violating international agreements, which makes it impossible for peace to prevail in the region.

The State of Qatar calls upon the international community and the United Nations to compel Israel to abide by the advisory opinion and immediately to dismantle the wall and compensate all who have suffered losses. The building of the wall is an illegal undertaking. Qatar believes that a just, lasting and comprehensive peace will not come about until international obligations are met and until Palestinians are able to exercise their right to establish an independent State with its capital in Al-Quds.

Israel has not followed the path towards just and comprehensive peace. Rather, it is perpetrating acts of aggression that fly in the face of international decisions. The building of the wall of separation is merely an extension of its policy of aggression. Israel is attempting to impose a fait accompli. It is also ignoring the advisory opinion of the International Court of Justice, thereby both ignoring the rights of the Palestinian people and flouting the decision of a supreme legal body.

We call upon the international community, as represented here in the General Assembly, to adopt the draft resolution endorsing the Court's advisory opinion. We would also like to say that we cannot accept any manoeuvring to permit a fait accompli imposed by force. The relevant resolutions of the Security Council must also be respected.

Mr. Kumalo (South Africa): My delegation wishes to express its appreciation for the reconvening of this tenth emergency special session in response to the advisory opinion of the International Court of Justice on the legality of the Israeli separation wall. We are pleased that the Court has finally silenced the old disagreements on whether the Court should exercise its jurisdiction by unanimously affirming its right to intervene on this matter.

We believe that our starting point in this debate today should be the recognition that there can be no sustainable political dialogue or peace until the fundamental rights and obligations of Palestinians and Israelis alike, including the right to security, are understood and respected by all. In other words, Israelis and Palestinians alike have the right to live in security, free from the daily threat of random violence. However, the situation in which one side enjoys more basic rights and freedoms than the other can no longer be sustained. There should be equality and protection before the law.

On 21 October 2003, this Assembly adopted resolution ES-10/13, tabled by the European Union, demanding that Israel stop and reverse construction of the wall in the occupied Palestinian territory. The resolution was adopted by an overwhelming majority of States. Israel ignored the will of the international community and accelerated construction of the wall, arguing that the wall was for self-defence purposes.

On 8 December 2003, the General Assembly passed the second resolution, ES-10/14, requesting an advisory opinion on the legality of the wall from the International Court of Justice. This time, Israel argued that the Court had no jurisdiction and that referring the matter to the Court would not be helpful to the peace process.

The International Court of Justice has now concluded that Israel cannot rely on an argument based on a right of self-defence or a state of necessity in order to preclude the wrongfulness of the construction of the wall. The opinion further states in the clearest terms possible that the construction of the wall and settlements is contrary to international law and international humanitarian law. According to the Court, Israel is therefore under a legally binding obligation to dismantle the wall and to provide compensation for all damage caused by its construction. The Court has also found that all States are under an obligation not to recognize the illegal situation resulting from the construction of the wall or to render assistance in maintaining the situation created by such construction. Furthermore, the Court reminded States parties to the Fourth Geneva Convention of their special obligation to ensure that Israel comply with international humanitarian law, as embodied in the Convention.

The advisory opinion ends the debate on whether the separation wall, which has led to so much senseless violence and divided and impoverished so many Palestinian communities, can be regarded as a legitimate security measure. This conclusion supported the argument made by the South African legal team at The Hague that if Israel were really interested in protecting its people, it would have built the wall on its own land rather than across Palestinian land.

It is now incumbent upon all law-abiding States to uphold the rules-based multilateral system by affirming the ruling of the Court and demonstrating that no State is above international law. The authority and integrity of the International Court of Justice are at stake here and we urge all member States to demonstrate the necessary political will and to support the decisions of the International Court of Justice.

The world cannot afford to turn a blind eye to the situation in the Middle East. At the recent United Nations African Meeting in Support of the Inalienable Rights of the Palestinian People held in Cape Town, South Africa, President Mbeki said,

> "There is not one of us who can feel that we are completely free when we are faced with the situation that the Palestinians face. And there is not one of us who can feel we are secure while we see so many people, Palestinians and Israelis, dying all the time."

My delegation would submit that the International Court of Justice has in its opinion refocused the debate on the occupation of Palestine, including affirming the human rights of the Palestinian people. It is now up to us, the member States, to recommit ourselves to facilitating peace in the Middle East. South Africa has always believed in a negotiated peaceful settlement in the Middle East that would result in two States living side by side in peace and within secure borders — that is, a sovereign State of Israel and a sovereign State of Palestine with East Jerusalem as its capital.

Mr. Aboul Atta (Egypt) (*spoke in Arabic*): The General Assembly meets today to continue a mission it began seven months ago, when it adopted by majority vote a resolution seeking the opinion of the International Court of Justice on the legality of the construction by Israel, the occupying Power, of a wall inside the occupied Palestinian territories, including East Jerusalem.

We reconvene today the tenth emergency special session, neither to deplore or denounce as usual Israeli outlaw practices, nor to reaffirm the right of the Palestinian people to establish its independent State and to live in peace and security in accordance with the vision of two States set forth in the road map. We meet here today to declare, on behalf of the international community, our full respect for the principles of international law and to assert that we hold sacred the word of truth, law and international legitimacy as laid down by the highest legal organ of the international system.

The advisory opinion of the International Court of Justice, issued on 9 July, reflects not only the opinions of its judges, the highest-ranking men of law, renowned for their professionalism and integrity; it also reflects the conviction of the international community that the construction of the wall is illegal and that it should be halted and the wall dismantled forthwith. It is the final word. The wall is a wall of segregation, of acquiring the territories of others by force, of siege, of obliterating the aspirations of hundreds of thousands of Palestinians, of imposing a fait accompli, and of pre-empting the results of the final status negotiations in the interests of one side and at the expense of the other.

The opinion of the International Court of Justice affirms the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Times of War to the occupied Palestinian territory. It also confirms the obligation of Israel, the occupying Power, to dismantle the wall and to make reparations for damage caused to Palestinians. It confirms that all States are under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction. Finally, the opinion stresses the need for the General Assembly and the Security Council to consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall.

Therefore, the international community, represented by the General Assembly, is called upon to recognize the need for respect for this opinion and to monitor Israel's implementation of its obligations. The Republic of Egypt looks forward to the adoption of the draft resolution by a large majority of Members. The draft resolution reaffirms the international community's respect for the opinion of the International Court of Justice and seeks to protect the political and human rights of hundreds of thousands of Palestinians.

We must begin the sought-for, true revitalization of the role of the United Nations by ensuring respect for its resolutions and by enhancing the role of its various organs. Today's event is one of the most important, and perhaps most sensitive, tests of our resolve to move forward in protecting this edifice — the United Nations, its Charter and the principles on which it is based. Egypt believes the only way to maintain international peace and security and to achieve progress and prosperity for humanity lies in respect for law, reverence for its provisions and recognition of the right of others to live in peace and security.

Some might believe that calling upon the Israeli Government to cease forthwith the construction of the wall and to dismantle the parts already built may somehow cloud the clear days ahead for the region: Israel's intentions to withdraw from the Gaza strip and the initiatives aimed at attaining that objective. We should like to stress that strengthening the confidence-building measures between the Palestinian and Israeli sides will create the momentum needed to help create the positive environment of which we speak. In our view, Israel can begin that process by halting the construction of the wall and moving forward in implementing its planned withdrawal from Gaza as first steps towards the implementation of the road map.

The President: We have heard the last speaker in the debate on this item for this morning.

The meeting rose at 1.05 p.m.

United Nations A/ES-10/PV.25

General Assembly

Emergency Special Session

Official Records

25th meeting
Friday, 16 July 2004, 3 p.m.
New York

President: The Hon. Julian R. Hunte ..... (Saint Lucia)

The meeting was called to order at 3.15 p.m.

Agenda item 5 (*continued*)

Illegal Israeli actions in occupied East Jerusalem and the rest of the Occupied Palestinian Territory

Note by the Secretary-General (A/ES-10/273)

Draft resolution (A/ES-10/L.18)

Mr. Danforth (United States of America): The draft resolution before us and the opinion of the International Court of Justice that it endorses point away from a political solution to the Israel-Palestinian conflict that would embody the vision of two States, Israel and Palestine, living side by side in peace and security. We must reject the draft resolution.

If there is to be a solution to the tragedy of the Middle East, it must be political, entailing the agreement by both parties to a reasonable compromise. The judicial process is not the political process, and the International Court of Justice was not the appropriate forum to resolve this conflict.

The nature of a political solution is balance. The claims of each side must be accommodated, or there can be no agreement. The draft resolution before us is not balanced. It is wholly one-sided. It does not mention the threat that terrorists pose to Israel. It follows a long line of one-sided resolutions adopted by the General Assembly, none of which has made any contribution to peace in the Middle East. Last year, the General Assembly adopted more than 20 such resolutions.

The draft resolution before us is the very opposite of the measures outlined in the road map to peace, endorsed by the Security Council. In implementing the road map, the two parties would achieve progress through reciprocal steps by the two parties in the political, security, economic, humanitarian and institution-building fields. The destination is a final and comprehensive settlement of the Israel-Palestinian conflict and the emergence of an independent, democratic and viable Palestinian State, living side by side in peace and security with Israel.

The Court itself stressed that the only way forward is through a negotiated solution, and emphasized the importance of the road map in this respect. The draft resolution before us points in the opposite direction.

Some members have pointed out that the opinion of the International Court of Justice is complex, and that it requires careful analysis. The rush to pass this draft resolution, just one week after the Court's opinion and after only hours of debate, denies us the time for reflection such a critical subject deserves.

Paragraph 139 of the Court's opinion especially deserves very careful consideration before we vote, for Member States that vote to accept the advisory opinion will vote to accept paragraph 139. Paragraph 139 can be read as giving a very troubling interpretation to Article 51 of the United Nations Charter, as a number of judges said.

This record contains the text of speeches delivered in English and of the interpretation of speeches delivered in the other languages. Corrections should be submitted to the original languages only. They should be incorporated in a copy of the record and sent under the signature of a member of the delegation concerned to the Chief of the Verbatim Reporting Service, room C-154A. Corrections will be issued after the end of the session in a consolidated corrigendum.

04-42994 (E)

The Court begins the paragraph quoting Article 51 as follows:

> "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security."

The Court then adds this confusing paragraph interpreting Article 51:

> "Article 51 of the Charter thus recognizes the existence of an inherent right of self-defence in the case of armed attack by one State against another State. However, Israel does not claim that the attacks against it are imputable to a foreign State."

So the Court opinion, which this draft resolution would accept, seems to say that the right of a State to defend itself exists only when it is attacked by another State, and that the right of self-defence does not exist against non-State actors. It does not exist when terrorists hijack planes and fly them into buildings, or bomb train stations or bus stops, or put poison gas into subways.

I would suggest that, if this were the meaning of Article 51, then the United Nations Charter could be irrelevant at a time when the major threats to peace are not from States but from terrorists.

The draft resolution is one-sided and moves away from the political process that leads to a two-State solution. The draft resolution adopts a confusing and troubling interpretation of Article 51. The United States will vote against the draft resolution.

Mr. Olhaye (Djibouti): The comprehensive ruling on 9 July by the International Court of Justice against Israel for constructing a suppression barrier or a wall within the occupied Palestinian territories goes deep into the heart of the Arab-Israeli conflict, unequivocally reconfirming and restating that fact that Israel persists in its illegal occupation of Palestinian territory and that the construction of settlements on that territory is illegal and represents a gross breach of international law.

The building of the suppression barrier, and in particular the route it is taking, is the clearest manifestation yet of the departure from the Armistice line of 1949, thus prejudging the outcome of future negotiations by rendering the two-State solution physically impossible to implement.

Unsurprisingly, Israel's prompt reaction to the judgement of the Court was that it did not see itself bound by it — dismissing it as a politically motivated manoeuvre. The argument presented by Israel that the barrier was temporary and did not create a new political border was found inconsistent with reality.

The Court rightly declares, therefore, that it cannot remain indifferent to certain fears expressed that the wall will prejudge the future frontier between Israel and Palestine and that Israel may integrate the huge settlements in the West Bank and their means of access.

The issues raised by the Court also include the fear that Palestinian communities may be completely encircled and the fact that the wall deprives a significant number of Palestinian of the freedom to choose their residence by forcing many to leave and thus tending to alter the demographic composition of the occupied Palestinian territories.

Let us be very clear: no one is casual about, dismissive of, or indifferent to Israel's security or right to exist. We have no conflicting views about this. Simply put, that is not an issue. The Court is amply clear on that point. While accepting Israel's right to defend its citizens against attack, the Court considers that Israel cannot rely on the right of self-defence or on a state of necessity which would preclude the wrongfulness of the construction of the wall. It continues on to say that the barrier constitutes breaches by Israel of its obligations under the applicable humanitarian law and that it cannot be justified by military exigencies or by the requirements of national security or public order.

Contrary to Israel's characterization, the Court's decision is not tantamount to a denial of its right to defend itself. That is a travesty of truth and common sense.

Israel can call this barrier by any other name, or justify it on any ground, but no one can dispute the fact that this barrier causes incalculable hardship and suffering to the Palestinian people by cutting through their farms, homes, businesses and schools — in sum, their livelihoods. It is working towards the creation of a de facto annexation of Palestinian land through the

creation of a fait accompli on the ground that could well become permanent.

The Court's judgement was remarkable in its explicitness, breadth and virtual unanimity. The vote coincides almost perfectly with last year's General Assembly resolution, which, by an overwhelming majority, demanded that Israel stop and reverse construction of the barrier. About two weeks ago, the Israeli Court, to its credit, issued a ruling that ordered the Government of Israel to change the course of the wall in certain locations, because of the damage done to many Palestinian people.

For the Court, however, not only is the construction illegal where it is, but it must be halted and reversed — that is, torn down, and the appropriate compensation must be paid to the aggrieved Palestinians.

The Economic and Social Council report issued in June, entitled "Economic and social repercussions of the Israeli occupation on the living conditions of the Palestinian people in the occupied Palestinian territory, including Jerusalem, and of the Arab population in the occupied Syrian Golan" (A/59/89), exposes in a graphic manner the deaths and injuries, particularly of children, last year in the Palestinian territories. The report details the arbitrary arrests and detentions, population displacement, the destruction and the confiscation of property, mobility restrictions and closure policies, among other things. The picture described is so horrifying and inhumane that it calls into question Israel's status as a modern industrial State that prides itself on being the only democracy in the Middle East. As a sovereign nation that is a Member of the United Nations — to which it owes its founding and existence — Israel is well-advised to adhere to the Charter scrupulously — like all of us — to behave like a normal Member and to commit itself to the restoration of Palestinian rights. That is the only basic requirement of the Assembly. Living with fear or coexisting with terror for generations should not be the preferred option, nor is it a smart choice. Israel knows better. It owes its citizens sound, sane and safe policies directed towards achieving genuine and lasting peace, security and harmony through recognition and respect of the rights, dignity and existence of other peoples.

Security for Israel is not a stand-alone proposition. Rather, it is intertwined and interdependent with Palestinian rights and freedom. Therefore, without tangible progress in the implementation of the road map, both parties, I am afraid, are doomed to mutual destruction, eternal strife and an uncertain future.

The international community cannot afford to remain a mere, passive bystander to this long-festering conflict, which has put a whole nation in jeopardy and submerged an entire region in pervasive instability and hostility. The task is urgent. The Quartet must take a genuine and active leadership role in building international consensus on this highly critical conflict. We all have a vital stake in an outcome that is realistic, honourable, fair and comprehensive.

Mr. Pak Gil Yon (Democratic People's Republic of Korea): The Democratic People's Republic of Korea welcomes the advisory opinion delivered by the International Court of Justice (ICJ) last Friday, which ruled that Israel's construction of a wall in the occupied Palestinian territory is illegal.

The advisory opinion is a victory for the Palestinian and Arab peoples and all the people of the world who support the just cause of the Palestinian people. It also gives great encouragement to the Palestinian people, who are striving to exercise their legitimate national rights.

The advisory opinion of the Court, which found Israel's building of the wall to be illegal, provides a legal basis for a fair solution to the question of Palestine. It eloquently attests to the fact that peace in the Middle East can never be achieved as long as Israel continues its occupation and its oppressive policies. The use of force in international relations cannot be a solution to any issue. It is important that Israel, as the occupying Power, should respectfully accept the advisory opinion and comply with its international obligations.

First, Israel must halt construction on the wall immediately, dismantle the sections of the wall already built and make reparations for all damages caused, as the advisory opinion indicates.

Israel should end its undisguised State terrorism carried out in the name of retaliation for terrorism and unconditionally withdraw its forces from the occupied Palestinian territory. It should immediately end the construction and expansion of Israeli settlements, the expulsion of Palestinian populations, the destruction of infrastructure and the plundering of cultural property. Other countries involved in the question of Palestine should also respect the Court's advisory opinion.

Even today, Israel is in a position to commit inhumane crimes against the Palestinian and Arab peoples without limitation. That is because certain countries actively back Israel politically, militarily and materially.

In that regard, the instigating and defending of the violent actions of Israel by taking advantage of privileged positions in the Security Council should be put to an end at once, and the Security Council should restore its impartiality and the confidence placed in its work by making the substantial contribution of taking further steps to put an end to the illegal situation created by the wall.

The cause of the Palestinian and Arab peoples of restoring their lost territory, their human rights and their right to self-determination is just. The Democratic People's Republic of Korea takes this opportunity to express its solidarity with and full support for the Palestinian people's just cause of recovering their legitimate national rights, including their right to return to their homeland and their right to establish an independent State with Jerusalem as its capital, and expresses its solidarity and support for the struggle of all Arab peoples for a fair solution to the Middle East question.

The Democratic People's Republic of Korea wishes to express its expectation that the tenth emergency special session will duly contribute to the halting of Israeli atrocities against Palestinians and to the realization of the legitimate national rights of the Palestinian and Arab peoples.

Mr. Mubarez (Yemen) (*spoke in Arabic*): Allow me at the outset, Sir, to express our appreciation for your excellent leadership of the General Assembly and your efforts to enable the Assembly to shoulder its full responsibilities.

We are indeed delighted to participate in this debate on the International Court of Justice advisory opinion in response to resolution ES-10/14. The opinion was a courageous decision characterized by transparency, responsibility and great respect for the law. It is clear and firm in addressing the issue of the racist wall, an embodiment of segregation, annexation and aggression. I also wish to hail the courage of the members of the Court who upheld the truth in the face of great pressure.

We do not need to dwell on the details of the opinion, which, in brief, states that the racist wall and all its attendant consequences run contrary to international law and violate the basic rights of the Palestinian people. All the Members of this Organization are therefore called upon to compel Israel to remove the wall and to compensate those affected.

There is no doubt that such a decision from the highest legal authority of the United Nations has a number of dimensions and important ramifications, including the fact that international law and norms remain references governing the directives and behaviour of Governments in the international arena. The Palestinian people needed just such a decision to reaffirm their rights, which are being violated daily by the Israeli occupying authorities. Indeed, we all needed such a decision at a time when the logic of might is on the verge of devouring the right and usurping the force of law.

Israeli settlement colonialism represents a setback for the progress of civilization in this era and a return to concepts that peoples have rejected after lengthy struggle. The Court's decision affirms the contradictions between Israel's practices and the spirit of the age, its contravention of international law and its violations of basic Palestinian rights. The Republic of Yemen welcomes the opinion as a just position based on international law and a victory for the values of justice and right.

The General Assembly's resolution referring the issue to the International Court of Justice was a wise one, affirming first and foremost the need to resort to the law that must govern the behaviour of political entities and individuals alike. While the Court has given concrete evidence of its transparency and sense of responsibility in handing down its opinion on the construction of the wall, the operative part of the draft resolution reminds the United Nations and its two main organs, the General Assembly and the Security Council, of their responsibility to reverse this illegal situation. The General Assembly's current efforts offer it the opportunity to resume its role in international decision-making.

The Republic of Yemen wishes to stress the need for the international community to assume its full responsibility to constrain Israel to implement the ruling in order to restore the rights of the Palestinian people and the credibility of the United Nations.

It is perfectly clear that Israel's aim in building the wall has nothing to do with its security needs. It is,

as the Court notes, to create a new de facto situation on the ground, to annex more of the occupied territories and to have a direct impact on the outcome of any peaceful settlement. The main avenue for stopping this illegal Israeli practice must be a just and peaceful solution guaranteeing an end to the occupation and enabling the Palestinian people to exercise its national rights. In that respect, the Republic of Yemen urges the Quartet to expedite the implementation of the road map and to reject any attempt by Israel to circumvent it. We repudiate any action by Israel that does not comply with the road map.

In conclusion, the Israeli Government's rejection of the International Court of Justice's advisory opinion and the insistence of its Prime Minister on pursuing the construction of the wall reflect Israel's disdain and ridicule for the logic of law within this Organization. They also represent a challenge to the international community itself. We are all therefore called on to strive seriously and resolutely to put an end to the ongoing Israeli aggression by adopting the draft resolution before us.

Mr. Jenie (Indonesia): Let me first join others in expressing condolences to the people and the Government of Austria on the passing away of the President of their country, Mr. Klestil. Our sympathy also goes to the people and Government of Nicaragua for all the suffering they are enduring due to the recent natural disaster.

We associate ourselves with the statements made by the Chairmen of the Non-Aligned Movement and the Organization of the Islamic Conference.

Let me also express to you, Sir, our appreciation for reconvening this emergency special session of the General Assembly on the question of Palestine to consider the advisory opinion of the International Court of Justice on the legality of Israel's construction of a separation wall. By doing this, you have once again demonstrated your commitment to the cause of peace in the Middle East.

Last week, the International Court of Justice offered a historic opinion on this issue, categorically declaring Israel's construction of the wall in the occupied Palestinian territory illegal and contrary to international law. It further said that the construction must cease and those parts of it in the occupied territory be dismantled immediately, and that Israel must make reparations for damage caused.

The International Court of Justice, which is the United Nations court, made the ruling within its jurisdiction and competence, which it unanimously determined. Its advisory opinion now confirms what most of the world has known from the beginning: the construction of the wall is illegal and constitutes a cynical affront to the peace process. It also proved that the action of the General Assembly at this session last December to refer the matter to the International Court of Justice for its interpretation was correct. After all, it will be recalled that, last October, the General Assembly demanded that Israel stop and reverse the construction.

The advisory opinion also confirms that all the actions of Israel in the occupied Palestinian territory against Palestinians are both outrageous and illegal and therefore must be condemned by the international community. It is an important and triumphant achievement for the Palestinian people, whose sufferings have multiplied over the years at the hands of the Israeli military occupation.

This confirmation represents a historic legal, ethical and political weight that Israel ought to respect and comply with. Further, the International Court of Justice also said that the General Assembly and the Security Council should determine what steps to take to terminate the illegal situation that the construction of the wall has brought about. It is therefore the duty of the international community to ensure that the Court's ruling be implemented. It is in view of that that we are pleased that the General Assembly is meeting in this emergency session today, because it would be wrong to permit the illegality of Israel to continue to stand for even one day more.

To begin with, the General Assembly, which asked the International Court of Justice for its advisory opinion in the first place, should formally recognize and accept the Court's opinion. The General Assembly should now demand that Israel comply with its legal obligations, as ruled by the ICJ in its advisory opinion, as well as with its responsibility towards the peace process.

My delegation would like to reiterate that the peace process remains a viable political process. The legal track became a complementary aspect only because of problems that had been created on the political track. It is our hope that all those who genuinely seek peace in the Middle East will view the

advisory opinion of the ICJ as encouragement to return to the road towards peace.

As we have done many times before, but in particular in view of the advisory opinion offered by the ICJ, my delegation urges Israel to return to the negotiating table. It is time to put a stop to all policies that breed only resentment and tension, rather than peace and progress.

In conclusion, we must commend the ICJ for its hard work and for coming to a wise, comprehensive and timely decision. My delegation hopes that, following the counsel of the ICJ, the major organs of the United Nations, particularly the General Assembly and the Security Council, will now work towards comprehensive implementation of the road map, the objective of which is two independent and viable States, Israel and Palestine, living side by side within secure and internationally recognized borders.

Mr. Haraguchi (Japan): In the written statement that Japan submitted to the International Court of Justice (ICJ) in January, Japan expressed its position that the construction of the wall inside the Green Line is negatively affecting the livelihood of Palestinians and prejudices the outcome of final status negotiations. In addition, we also expressed the view that, on the basis of the limited information available, the construction of the wall inside the Green Line appears to be in contradiction of relevant provisions of international law, and hence should be stopped. Based on that position, we find it truly regrettable that Israel is continuing to go forward with construction of the wall inside the Green Line.

We take note of the recent ruling by the Israeli Supreme Court that ordered the Israeli Government to change the route of the wall, and of the work subsequently started by the Government to alter the route. We will carefully observe the future course of action of the Government of Israel to see if changing the route will bring about an end to construction of the wall inside the Green Line. The advisory opinion that the ICJ recently issued states that the construction of the wall by Israel in occupied Palestinian territory is contrary to international law and that Israel is therefore obligated to put an end to that illegal situation. Japan expects that Israel will act appropriately in this matter.

Japan notes that a large number of innocent Israeli lives have been lost in terrorist attacks by Palestinian extremists and expresses its position that the Palestinian Authority must make the utmost effort both to improve its security capacity and to suppress terrorism.

The issue regarding the construction of the wall has arisen in the midst of the current prolonged chain of violence between Israelis and Palestinians and the state of stagnation in the implementation of the road map. Japan therefore believes that the fundamental resolution of the issue must be worked out through negotiations between the two parties and through the full implementation of the road map, which aims at realizing the vision of two States, Israel and Palestine, living side by side in peace. I take this opportunity to appeal once again to the two parties to implement their obligations under the road map in good faith. Japan will continue to do its best to support such efforts by the two parties for the attainment of peace.

Mr. Konuzin (Russian Federation) (*spoke in Russian*): The events taking place in the Middle East peace process continue to arouse deep concern in the international community. Those events require that we all continue to review how to help the parties overcome the profound mutual distrust that is preventing them from finding a way out of the impasse in the negotiations.

We share the views expressed on 13 July 2004 by Mr. Terje Roed-Larsen, Special Coordinator for the Middle East Peace Process (see S/PV.5002). Indeed, the Middle East peace process is by no means experiencing its best moment, but the hope of overcoming the crisis is far from lost. The peoples of Israel and Palestine continue to believe that a way out of the crisis will yet be found and that peace and calm will return to their land.

None of us has a ready-made formula. But the main thing is that there is a general understanding that in the current circumstances, strict compliance with the provisions of the road map and the endeavours of the Quartet of international mediators have taken on particular significance. The major advantage of their assistance is in focusing on linking the Israeli plan to exit Gaza and a portion of the West Bank with the road map.

The Quartet's ministerial-level meeting planned for September in New York is good reason to create conditions conducive to the renewal and continuation of the negotiating process, as well as to restore bilateral contacts.

We wish to point out the positive role being played by countries of the region towards a Middle East settlement, in particular by Egypt and Jordan. For our part, we shall work closely with the leadership of Israel and the Palestinian Authority.

Of course, we cannot ignore the issue of the International Court of Justice (ICJ) and the separation wall. We respect the opinion of the ICJ as expressed in its advisory opinion of 9 July 2004 with regard to the legal consequences of Israel's construction of a separation wall on Palestinian territory. It is important that the advisory opinion not be an excuse for entanglement in useless polemics, or a way of whipping up passions. We must now focus on practical matters, to move the peace process out of the current deadlock and to begin to move once again towards peace on the basis of the road map.

Mr. Danesh-Yazdi (Islamic Republic of Iran): Allow me to join previous speakers in expressing our deep condolences to the people and the Government and Austria on the passing away of His Excellency Mr. Thomas Klestil, late President of the Republic of Austria. We also extend our sympathies to the Government and the people of Nicaragua on the loss of life and the damage that the people of Nicaragua are suffering as a result of the floods there.

We consider last Friday's advisory opinion by the International Court of Justice (ICJ), the principal judicial body of the United Nations, to be a very important development in the course of the long-standing endeavours by the Palestinian people to seek their basic national and humanitarian rights. The ICJ is clear and unambiguous in finding that the construction of the wall by Israel in the occupied Palestinian territory is contrary to international law, and that therefore the construction of the wall should stop, the structure already erected should be dismantled and all relevant legislative and regulatory acts should be forthwith repealed or rendered ineffective.

The Court also holds Israel accountable for all damage caused by the construction of the wall in the occupied Palestinian territory. It further states that Israel is under an obligation to make reparation for all damage caused by the construction of the wall in the occupied Palestinian territory. The Court observes that the obligations violated by Israel include certain obligations *erga omnes*. In that context, the court finds that all States are obliged not to recognize the illegal situation resulting from the unlawful act of wall-building activities by Israel.

The reference made by the Court to the developments that resulted in the issuance of the present advisory opinion on the issue at hand is also of great importance. The failure of the Security Council, as a result of the use of veto power by one permanent member and, consequently, the legality of the actions taken by the General Assembly are also noted by the Court in its opinion. Equally important is the fact that the ICJ observes the need for consideration by the General Assembly and the Security Council of the further action required to bring to an end the illegal situation resulting from the construction of the wall and its associated regime.

We are frequently reminded by a section of the media, as well as by some in official quarters, that the opinion expressed by the ICJ is advisory, and is thus not binding. Nevertheless, in our view, it should not be taken to mean that those specific legal obligations referred to and deemed by the Court as *erga omnes* — that is, binding on all members of the international community — are not obligatory and can be ignored at will. On the contrary, the Court explicitly notes in paragraph 149 of its opinion — which is contained in document A/ES-10/273 — that Israel is bound to comply with its obligation to respect both the right of the Palestinian people to self-determination and its obligations under international humanitarian law and human rights law.

We believe that the historic opinion rendered by the ICJ has presented us with a great opportunity to address more ardently the long-lasting Palestinian crisis, which is unfolding in one of the most volatile and unstable regions of the world. In our view, the General Assembly, which is convened today to consider the Court's advisory opinion, should not fail to seize this opportunity. A strong vote in favour of the draft resolution before the Assembly would amount to a powerful sign indicating the interest of the international community in furthering the rule of law at the international level and helping redress the gross injustice done to the Palestinian people as a result of the illegal construction of the wall in the occupied Palestinian territory.

Mr. Kirn (Slovenia), Vice-President, took the Chair.

The building of the separation wall is clearly an unlawful act that has increased hostility and heightened

the level of violence. It is indeed a deliberate attempt by the Israelis to strike another blow against any hope for genuine peace. In the wake of the issuance of the advisory opinion by the ICJ, the international community is better placed than ever to deal strongly with this aggressive and illegal act. Now there is an absolute need to translate the ruling emanating from The Hague into political actions, here and on the ground, and to defeat the ongoing organized activities aimed at preventing its implementation.

Undoubtedly, decisive action today by the Assembly in doing away with the construction of the wall and its associated regime will be a big step towards restoring the legitimate rights of the Palestinian people, thereby paving the way to putting an end to a crisis that has lasted for a very long time and that has had an effect on the whole region, as well as beyond.

Mr. Chidyausiku (Zimbabwe): Like many others who have already spoken, my delegation welcomes the advisory opinion of the International Court of Justice (ICF) regarding the legality of Israel's West Bank barrier and the need to immediately cease construction of that apartheid wall. Indeed, the victory of the Palestinian people rises higher than the Israeli wall.

The advisory opinion and the conclusions put forth by the Court constitute authoritative findings by that principal organ of the United Nations on the legal obligations arising from international law with regard to this matter. The advisory opinion is vested in international law and rooted in international humanitarian law, and it has the strength of that law. All law-abiding nations should respect the Court's opinion and comply with its provisions. The apartheid wall must be dismantled.

The General Assembly must take action on the basis of the verdict of the International Court of Justice. The wall infringes upon the right of the Palestinian people to self-determination and strengthens Israeli settlements by facilitating their extension in disregard of the fact that those settlements are illegal under international law. Furthermore, the wall destroys the economic and social basis of the lives of the Palestinian people.

The wall will not bring peace and security to Israel. Walls are the most primitive and ineffective form of defence. History is littered with examples of such failures. The only guarantee for peace and security for both the Palestinian and Israeli peoples is the realization of two States, Israel and Palestine, living side by side within secure and recognized borders, as affirmed in Security Council resolution 1397 (2002). The wall is a hindrance to the realization of that concept and the implementation of the road map promoted by the United Nations and the international community.

The Palestinian people need the international community to rein in Israel and make it comply with United Nations resolutions, as everyone else is required to do. So long as Israel does not comply with United Nations resolutions, guaranteed impunity by you-know-who, the Organization will be rendered useless and impotent. The double standard has to stop. How long, one may ask, will those with the means to end the violence look away while the Palestinian people continue to suffer? No amount of force will ever succeed in cowing a people under occupation. Let us not delude ourselves.

My delegation will vote in favour of a draft resolution that will cause the opinion of the ICJ to be implemented.

Mr. Nguyen Duy Chien (Viet Nam): On behalf of the delegation of Viet Nam, I would like to express our great appreciation for the reconvening of the tenth emergency special session of the General Assembly immediately following the issuance of the advisory opinion of the International Court of Justice (ICJ) regarding the legal consequences of the construction of a wall in the occupied Palestinian territory.

We fully associate ourselves with the statement delivered by the representative of Malaysia on behalf of the Non-Aligned Movement.

Viet Nam firmly believes that a just and lasting settlement to the Middle East conflict can be found only on the basis of the implementation of Security Council resolutions 242 (1967) and 338 (1973). We are also convinced that serious efforts must be undertaken to achieve a two-State solution that would ensure the creation of a sovereign, independent and viable State of Palestine and the existence of Israel, both living side by side in peace and security within secured and recognized borders, as envisaged in Security Council resolutions 1397 (2002) and 1515 (2003).

Proceeding from that conviction, Viet Nam has always supported the tireless efforts of the General Assembly, including its decision on 8 December 2003 to request an advisory opinion from the International

Court of Justice on the legal consequences of the construction of a wall in the occupied Palestinian territory (resolution ES-10/14). In that spirit, Viet Nam welcomes the advisory opinion rendered by the Court on 9 July 2004.

The Court's opinion has provided an authoritative answer to the question the General Assembly submitted to it. In arriving at the solid findings and indisputable conclusions contained in its opinion, the Court not only has provided good services to the international community as a whole and to the United Nations in particular, but also has performed its role as the supreme arbitrator of international legality and safeguard against illegal acts.

Undoubtedly, the opinion will greatly contribute to the just cause of finding a satisfactory solution to the Middle East conflict. Now it is time for the General Assembly and the Security Council — as stated in the last conclusion of the opinion — to consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated regime.

Mr. MacKay (New Zealand): The International Court of Justice has advised Israel and the rest of the world community that the wall Israel is building in the occupied territory is illegal and that Israel should stop building it. The Court's advisory opinion carries the weight of the highest judicial organ of the United Nations. In other words, it should be listened to and followed.

There is no question that the State of Israel has the right to protect its citizens. New Zealand has the greatest sympathy for those who have been killed and maimed and for their families. Both Israelis and Palestinians have been victims of the horrendous human toll that the escalation in violence over the past year has brought. We have called on the leadership of both sides to act to stop that needless suffering. But, as Israel's own courts have said, there are limitations on the actions it can take in exercising its right to self-defence.

We call upon Israel to abandon construction of a wall taking in parts of the West Bank. The detrimental effect on Palestinians who live within its path — those separated from their livelihoods or from other community facilities such as schools and hospitals — has been well documented. Israel's own courts referred to that in recommending that the route of the wall should be adjusted.

In October last year, in a statement to the Security Council (see S/PV.4841), New Zealand argued that the construction of the wall taking in parts of the West Bank would not provide long-term security for Israel. Only a final resolution, achieved through a negotiation between the two parties, will achieve that. We said then that the construction of such a wall — raising fears, as reflected in the opinion of the International Court of Justice, that it could serve to create de facto borders on the ground in advance of a negotiated solution — is serving only to undermine the peace process and the trust needed for true dialogue. The lack of momentum behind peace efforts since then has graphically illustrated that point. The separation wall on occupied territory — along with other heavy-handed tactics from Israel and the continued use of terror attacks by Palestinian extremists — has contributed to the frustrating lack of progress.

New Zealand strongly supports the efforts of the Quartet to facilitate a peace between the two parties. We call again on both Israeli and Palestinian leaders to take the opportunity offered by the international community and to re-engage in that process.

Mr. Zhang Yishan (China) (*spoke in Chinese*): The Chinese delegation welcomes the convening of the resumed tenth emergency special session of the General Assembly at the request of the League of Arab States and the Non-Aligned Movement.

On 9 July 2004, the International Court of Justice rendered its authoritative advisory opinion on the legal consequences of the construction by Israel of a wall in the occupied Palestinian territory. The Court found that the construction of the wall by Israel is contrary to international law and that Israel is under an obligation to cease forthwith the construction of the wall, to dismantle forthwith the structure situated in the occupied Palestinian territory and to make reparation to the Palestinians for all damage caused by construction of the wall. The Court also suggested that the United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall, taking due account of the present advisory opinion.

We believe that safeguarding the authority of international law in the resolution of disputes in

international affairs is a shared responsibility of the international community. Although the Court's advisory opinion is not legally binding, all relevant parties should give it serious consideration. We hope that the opinion will help to promote positive developments in the Middle East peace process.

The history of the Middle East is complex. War and violence have not brought about peace; nor will the construction of the wall guarantee security for Israel. History shows repeatedly that resolving disputes through political negotiation is the only correct path towards achieving long-term peace and security in the region. The international community is now taking positive action aimed at promoting peace by breaking the impasse with regard to Palestinian-Israeli peace talks. We call upon all relevant parties to seize the opportunity to engage in dialogue and to do their utmost to restore mutual trust so that we can return to the correct path of peaceful negotiation.

The Acting President: I now give the floor to the representative of Cuba.

Mr. López Clemente (Cuba) (*spoke in Spanish*): Cuba fully supports the resumption of the tenth emergency special session of the General Assembly. Likewise, my delegation associates itself with the statement made earlier by Malaysia on behalf of the Movement of Non-Aligned Countries.

The dangerous and unacceptable construction by Israel, the occupying Power, of a separation wall on occupied Palestinian territory, including East Jerusalem, adds to the long history of occupation, aggression, illegal settlement, massive, flagrant and systematic human rights violations, State terrorism, extrajudicial executions, economic suffocation and physical and psychological harm to the Palestinian people by Israel.

Despite the numerous appeals by the international community to Israel to put an end to the violence and halt and reverse the construction of the wall, which has involved the confiscation and destruction of Palestinian land and resources, the disruption of the lives of millions of defenceless civilians and the annexation of vast swaths of territory, the occupying Power is continuing to escalate its aggression, making the possibility of achieving a just and lasting peace in the region increasingly remote.

The advisory opinion on the building of the wall issued on 9 July by the International Court of Justice gives support to the claims made by many Member States during a number of General Assembly and Security Council meetings.

The opinion does not allow for ambiguity. The construction of the wall being built by Israel on occupied Palestinian territory, including East Jerusalem and its environs, is illegal and violates the norms and principles of international law and the relevant Security Council and General Assembly resolutions.

The inadmissibility of the acquisition of territory by force, an accepted principle of international law, was clearly reaffirmed by the Assembly in its well-known resolution 2625 (XXV). Thus the international community has always refused to recognize the illegal Israeli settlements and the annexation by Israel of East Jerusalem and the Syrian Golan, as reflected in Security Council resolutions 465 (1980), 478 (1980) and 497 (1981).

Israel is seeking to present the construction of the wall on occupied Palestinian territory as a security measure. But the wall has in fact been erected — as can be seen from the official map — with the purpose of enclosing a significant portion of the total area of the West Bank, including agricultural land, water resources and villages. That amounts to de facto annexation. The security situation is being used as a crude pretext for Israel's territorial expansion.

Israel's actions show that it is once again adopting a position that will obstruct any genuine peace process, while the creation of new physical divisions in the occupied Palestinian territory makes the possibility of achieving a just, final settlement of the conflict even more remote.

Violence and the use of force cannot bring about the resolution, so long hoped for by the world, to a conflict that could have been resolved many years ago had the Security Council been able to act decisively and — above all — had the paralysing and complicit vetoes of the United States not prevented appropriate action from being taken to bring about the withdrawal of Israel from all the occupied territories and to achieve peace in the Middle East region — the peace to which we all aspire.

Cuba reaffirms its resolute support for the cause of the Arab peoples and expresses its absolute solidarity with their struggle and their resistance against foreign occupation. We reaffirm that a just and

lasting peace in the Middle East can be achieved only if the Israeli occupation is brought to an end and if the Palestinian people can exercise their legitimate right to establish an independent State with its capital in East Jerusalem; if all the Arab occupied territories are returned and Israel withdraws from the Gaza Strip, the West Bank and the Syrian Golan to the line of 4 June 1967; and if all Israeli provocations in southern Lebanon cease, the return of the Palestinian refugees is assured and the illegal Israeli settlements are removed, pursuant to Security Council resolution 465 (1980).

The General Assembly and the Security Council must take the necessary steps to ensure compliance with the legal obligations defined by the Court.

Each new stone that is laid in the continuing construction of the wall will intensify the illegal Israeli occupation and perpetuate the system of apartheid established by Israel in the occupied Palestinian territories. This will increasingly militate against the possibility of achieving a negotiated, just and lasting settlement to the Palestinian-Israeli conflict.

The construction of the wall must cease immediately. Those parts that have already been built should be demolished without delay. The Palestinian people must be compensated for the serious harm done to them, and their legitimate rights must be fully restored.

For those reasons, Cuba has joined in sponsoring the draft resolution submitted under this item and calls upon Member States to vote in favour of it.

Mr. van den Berg (Netherlands): I have the honour to take the floor on behalf of the European Union. The candidate countries Bulgaria, Romania, Turkey and Croatia, the countries of the Stabilization and Association Process and potential candidates Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia and Serbia and Montenegro and the European Free Trade Association country Iceland, member of the European Economic Area, align themselves with this statement.

The advisory opinion of the International Court of Justice on the legal consequences of the construction of a wall in the occupied Palestinian territory will need to be studied carefully.

The European Union, while recognizing Israel's right to protect its citizens from terrorist attacks, has demanded that Israel stop and reverse the construction of the barrier inside the occupied Palestinian territory, including in and around Jerusalem, which is in contravention of the relevant provisions of international law.

The President returned to the Chair.

The European Union underlines that the political process, as laid down in the road map, is of overriding importance. The European Union reiterates its conviction that the political process represents the only route to achieving a negotiated two-State solution, agreed upon between the parties, which would result in a viable, contiguous, sovereign and independent Palestinian State, existing side by side in peace with an Israel living within recognized and secure borders.

Mr. Cengizer (Turkey): I am speaking on behalf of the Organization of the Islamic Conference (OIC).

Facilitating the establishment of a lasting and secure peace settlement in the Middle East is the shared goal of the international community. To attain that goal, the international community must cultivate a productive dialogue that paves the way for cooperation. Otherwise, we fear that the turmoil and conflict that has reared its ugly head in the Middle East will continue and grow.

The International Court of Justice has reached a groundbreaking decision regarding the legal consequences of the construction of a wall in the occupied Palestinian territory. The Court's advisory opinion responds in a clear and sound manner to the question put to it by the General Assembly. Furthermore, the opinion accords with the beliefs of an overwhelming majority of the international community and with the position of the OIC.

We believe that the Court's opinion is based on an impartial legal analysis of actions on the ground. The legality of Israel's actions has been questioned because the wall is being constructed on occupied territory — an action which is inconsistent with the Fourth Geneva Convention.

Although the Court's ruling is non-binding, it should still be embraced, as a stance that clarifies the reach and extent of international humanitarian law and the spirit of human rights protection.

Given the problem that the continued construction of the wall creates for peace, stability and security, we believe that the international community cannot ignore this issue. We believe that it is the duty

of all United Nations organs to reiterate that the basic parameters of a solution are solid and must not be shaken by any de facto unilateral action on the ground. Instead, the goal must be to swiftly revitalize the negotiation process.

Indeed, the Organization of the Islamic Conference (OIC) issued a communiqué on 14 July 2004, in which it said,

> "The International Court of Justice is of the view that the question concerned is absolutely of a legal character, and it responds to it in a clear and soundly justified manner.
>
> "The construction of the wall and the attendant regime are declared to be contrary to international law. All the legal consequences are drawn therefrom. Israel is under the obligation to end this construction, to dismantle portions already constructed and to annul laws and decrees issued in this respect. All damages caused by the construction of this wall should be compensated. All other States are requested to refuse all forms of assistance for the maintenance of the situation thus created by Israel. They all have to work together to compel Israel to respect international humanitarian law.
>
> "The Court insists on the illegality of the wall in and around East Jerusalem and on the obligation of respecting free access to the holy places. It also makes the Palestinian people's right to self-determination a central argument and condemns the wall since it constitutes a serious hindrance to the exercise of that right.
>
> "This extremely important opinion, rendered by 14 votes against one, is an indisputable and defensible indication of what should be the strict application of international law with regard to the Palestinian cause and therefore contributes to indicating the road to peace."

While consistently rejecting terrorism and while not denying the right of all States to fight against that scourge, the OIC believes that this position should in no way be construed as condoning the violation of the legitimate rights of others.

Accordingly, we believe that the wall in its present form and with its future plans for construction is not a healthy solution. The barrier undermines the basic vision of Israelis and Palestinians living side by side, in their respective States, in safety and security. It strengthens the perception of an unjust Israeli occupation and restricts the basic human rights of hundreds of thousands of Palestinians.

In conclusion, it is abundantly clear that these circumstances cannot enhance Israel's security in the medium and long terms. The focus must remain on the road map, and Israel must acknowledge that safety and security can reign supreme only when a peaceful settlement is reached.

Mr. Adekanye (Nigeria): The Nigerian delegation wishes to express appreciation to you, Mr. President, for convening the resumed tenth emergency special session of the General Assembly. We join previous speakers in expressing our condolences to the Government and the people of Austria on the death of President Thomas Klestil. We also express our sympathy to the Government and the people of Nicaragua over the losses sustained in that country as a result of the recent flooding.

Nigeria associates itself with the statement made by the representative of Malaysia on behalf of Non-Aligned Movement. We recall that at the 23rd meeting of the tenth emergency special session, held in December 2003, the General Assembly, in accordance with Article 96 of the United Nations Charter, by resolution ES-10/14 decided to request the International Court of Justice to render an advisory opinion on the legal consequences of the construction of the wall by Israel on the occupied Palestinian territory. The Secretary-General, in his note contained in document A/ES-10/273, transmitted to the General Assembly the advisory opinion of the Court, confirming that the advisory opinion was rendered on 9 July 2004.

It is the decision of the General Assembly that the Palestinian issue shall be settled in all its aspects in a satisfactory manner on the basis of international legitimacy. In response to the request of the Assembly, the International Court of Justice determined, by a vote of 14 to one, that the construction of the wall by Israel in the occupied Palestinian territory is contrary to international law and that Israel is under the obligation to stop its breaches of international law. It also determined that Israel should stop the construction of the wall. The Court further determined that Israel is under the obligation to make reparations for damage caused by the construction of the wall and that all States are under the obligation not to recognize the

situation arising from the occupation of Israel of the Palestinian territory.

In resolution 2625 (XXV) of 1970, the General Assembly reaffirmed the illegality of the acquisition of territory by the threat or the use of force, as well as the inherent right of all peoples to self-determination. This is to avoid the situation of a fait accompli which, if allowed or condoned, could result in the de facto annexation of land.

It is trite to state that the Israeli-Palestinian conflict has lasted too long and, regrettably, has almost assumed a permanent nature. The parties concerned and the international community should not allow this situation to continue. It is therefore our view that nothing — however desirable or justifiable it may appear to any of the parties to the conflict — should be done which would worsen an already charged and volatile situation. With that in mind, we call on Israel to honour its obligations under international law and the Charter of the United Nations and to accept the findings of the International Court of Justice. That, in our view, would foster and brighten the prospects for sustainable peace between the parties and in the Middle East in general.

However, while we call on Israel to honour its obligations as a member of the international community, we recognize that this in itself, without further action, will not be enough to bring sustainable peace to the Middle East. In that regard, we also recognize that it will take the parties to the conflict to make peace, as unilateral action, even in good faith, by one party alone may not necessarily result in genuine peace. Accordingly, we call on both Israel and Palestine to end all acts of discord and violence forthwith and to restart the peace process, as outlined in the road map. Consequently, the two parties should summon up the necessary political courage and resume negotiations in a spirit of flexibility and compromise. It is only when that is done that there will be true, genuine and lasting peace, resulting in the envisioned two States, Israel and Palestine, living side by side with each other. That, in our view, will usher in the sustainable peace in the Middle East for which we have long been waiting.

Mr. Dauth (Australia): Australia regrets that on 9 July the International Court of Justice delivered an advisory opinion on Israel's security barrier. Australia voted against General Assembly resolution ES-10/14, which referred the matter to the Court. We remain of the view that the resolution unfairly isolated a single issue in a complex conflict; that it served no purpose, given the nature and content of resolutions already adopted by the Assembly; that it would politicize the Court; and that it would distract the parties — as is happening — from the urgent need to resume negotiations in order to resolve the tragic and long-running Israeli-Palestinian dispute.

Australia urges Israel and the Palestinian Authority to meet their commitments under the United Nations-endorsed road map to Middle East peace and to move towards a two-State solution which would see Israel and a State of Palestine living side by side in peace, security and prosperity. Australia notes that the International Court of Justice, in its advisory opinion, recognized the importance of negotiations under the road map and the need for those efforts to be encouraged.

Mr. Sharma (Nepal): I thank you, Mr. President, for convening the resumed tenth emergency special session of the General Assembly to consider the note by the Secretary-General dated 13 July 2004 transmitting the advisory opinion of the International Court of Justice on the legal consequences of the construction of a wall in the occupied Palestinian territory (A/ES-10/273).

Focusing on the very narrow question of the wall, the International Court did not find any legal justification for Israel's construction of that wall and has placed an obligation on Israel to make reparations for all damages caused by the construction of the wall in the occupied Palestinian territory, including in and around East Jerusalem. The Court has asked the United Nations, and especially the General Assembly and the Security Council, to consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated regime, taking due account of the advisory opinion of the Court.

Nepal fully supports the opinion of the Court, and urges the United Nations to take urgent measures to address the issue raised by the International Court of Justice.

But the question is much broader and more complex than the issue of the wall. The bigger question is how we can ensure that the two peoples find a modus vivendi, a way of living together. His Majesty's

Government of Nepal has all along unequivocally supported a two-State solution for the Middle East. We have always held that Israel has the right to live in peace within secure borders and that the Palestinian people have the right to a viable State of their own. Neither terrorism nor the excessive use of force will help find a lasting solution in the Middle East. Neither will the wall.

The way forward, therefore, is through a negotiated settlement of the problem. Both Palestinians and Israelis must, as I said, find a modus vivendi and build bridges of trust and cooperation. More than ever before, the international community has a duty and an obligation to help find such a solution and to contribute to the establishment and maintenance of permanent peace in that troubled region.

The President: We have heard the last speaker in the debate on this item for this meeting.

I note that draft resolution A/ES-10/L.18 has been circulated to all delegations in the General Assembly Hall; action on the draft resolution will be taken next week.

The meeting rose at 4.45 p.m.

United Nations A/ES-10/PV.26

General Assembly
Emergency Special Session

Official Records

26th meeting
Monday, 19 July 2004, 3 p.m.
New York

President: The Hon. Julian R. Hunte ..... (Saint Lucia)

The meeting was called to order at 3.15 p.m.

Agenda item 5 (*continued*)

Illegal Israeli actions in occupied East Jerusalem and the rest of the Occupied Palestinian Territory

Note by the Secretary-General (A/ES-10/273 and Corr.1)

Draft resolution (A/ES-10/L.18)

The President: Members will recall that a provisional version of the draft resolution before the Assembly in document A/ES-10/L.18 was distributed to Member States on Friday, 16 July 2004.

I now give the floor to the representative of Jordan.

Mr. Zoubi (Jordan): Last Friday, 16 July, Jordan, on behalf of the Group of Arab States and the group of sponsors, which is listed in document A/ES-10/L.18, presented a draft resolution entitled "Advisory opinion of the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, including in and around East Jerusalem". There is a correction to be made to the document. In the list of sponsors, the word "Mauritius" should by replaced by the word "Mauritania". Additionally, Iraq and Belize have joined the list of sponsors.

In order to allow ample time for negotiations, a revised text will be produced at a later stage and will be available in this room at 5 p.m. today. We hope that action will be taken tomorrow on the draft text as revised.

The President: I would like to inform members that as reflected in that statement, further consultations are obviously still going on concerning draft resolution A/ES-10/L.18. Action on the draft resolution is therefore postponed until a later date, to be announced in the *Journal*.

I call on the representative of Israel.

Mr. Gillerman (Israel): I feel that I may have contributed in a very minor way to saving the honour and the grace of some members here because, having been summoned here for exactly 90 seconds would, I think, have been a humiliating waste of time for most of us.

In that context, I wish to protest this meeting. I am sure that most of the representatives around this table have more important things to do than to listen to a 30-second statement that says nothing about where we are or about this draft resolution. We were summoned on Friday. A meeting was called for today. Now we are being told that another meeting is going to be called and I fail to understand the purpose of this meeting.

I feel that the United Nations, the General Assembly and, on a personal level, each and every person in this room are being taken for a ride and abused by the Palestinian observer and people who represent the Palestinian cause. I would like to point out to members of the General Assembly that it seems that the Palestinians should be the last people to preach to us, to the world

This record contains the text of speeches delivered in English and of the interpretation of speeches delivered in the other languages. Corrections should be submitted to the original languages only. They should be incorporated in a copy of the record and sent under the signature of a member of the delegation concerned to the Chief of the Verbatim Reporting Service, room C-154A. Corrections will be issued after the end of the session in a consolidated corrigendum.

04-43156 (E)

community, about law and order and about international law.

I said on Friday that the Palestinian Authority was a very real case in which the inmates have taken over the asylum. Each and every one of us has witnessed what has happened since that Friday: the head of the Palestinian police force was first kidnapped and then freed; French nationals were kidnapped and then freed; other people were kidnapped; a new person was named to head the Palestinian police force and then fired; the Palestinian Prime Minister has resigned.

This is a state of total lawlessness and I think that we should all bear in mind who the Palestinian observer represents and whether we really want to be preached to any further about law and order, about international law, by that entity. And I think that what has been initiated here today adds insult to injury in that respect.

The President: I now give the floor to the observer of Palestine.

Mr. Al-Kidwa (Palestine): In reference to the statement by the hopeless previous speaker, I just want to make a few comments.

The draft resolution contained in document A/ES-10/L.18 relates to a case brought by the General Assembly in relation to the conduct of Israel, the occupying Power, before the International Court of Justice.

It is not Palestine versus Israel. It is the United Nations and the General Assembly versus the occupying Power, which is the only remaining colonial Power in the world — a country that is involved in colonizing the land of the indigenous people of Palestine, a country that has consistently been violating the provisions of the Charter of the United Nations, United Nations resolutions, the relevant provisions of international law, and all rules and norms related to proper conduct and even to morality.

I am not going to dwell on that statement. I will nevertheless take this opportunity to clarify a few things in relation to the draft resolution.

The draft resolution which was distributed last Friday already enjoys broad support among the members of the Assembly; I do not believe that I am revealing any secret in this regard. Nevertheless, it is, in the end, the International Court of Justice, and the sponsors felt that, given the importance of the matter, we should try to muster near-unanimity among the Members of the United Nations. One important group in particular is seriously engaged in negotiations, but, for obvious reasons, could not reach a final decision.

We had intended to invite members to take action on the draft resolution today. We believe that all of the discussions, contacts and negotiations that have taken place will lead to the first revised text in a few hours — perhaps two hours.

We also took into consideration once again the need for Member States to have ample time to look at the revised text, once it has been arrived at. In the past, some Member States have stressed the need for this, and we obviously respect that. That is why the sponsors, represented by Jordan, proposed that the voting be postponed until tomorrow, in spite of the fact that the revised text will be available today, and in spite of the importance of the time factor for us.

The bottom line, then, is very clear. There are still some negotiations under way aimed at broadening support even further. In addition, we believe that it is everyone's right to take the necessary time to consult with capitals before action is taken.

The sponsors of the draft resolution, as Jordan noted, intend to request the President of the Assembly to allow a vote tomorrow — hopefully in the afternoon, so, again, people have enough time.

Negotiations and the taking of positions in deference to one another might not be something that is very familiar to a minority here, but we try our best at least to behave in that way.

I should like to thank you, Mr. President, as well as the members. We regret any inconvenience. Nevertheless, we believe that everyone understands the importance of the matter. It is not something that happens every day, and adequate attention should be given and the necessary time allotted to the draft resolution. Again, we hope that your schedule will allow action to be taken on this draft resolution tomorrow afternoon.

Mr. Zoubi (Jordan): The representative of Israel said that I wasted half a minute of the Assembly's time. I apologize to the rest of the members, because I did not intend to take them for a ride

I hope I did that in six seconds.

The President: Before I bring the meeting to a close, I just want to make one point, which concerns something that bothered me even before I took over as President of the General Assembly.

I really want to caution against the language being used in matters that are ticklish in debates which sometimes have the tendency of being more inflammatory and not necessarily helping the cause. I really want to make it clear that, for whatever reason — and I do not really care who is upset — I really object to any analogy that is made, particularly from the inside, which may have a tendency to describe us in the Assembly as inmates in an asylum. I think that we can find better language to use in terms of describing the debates that are taking place here in what I consider the mother and the father of all democracies.

Our job here is to debate issues, no matter how long it takes, no matter how innocuous they may appear. But the fact is that that is what we are here to do, and I sincerely hope that all of us understand the basis of the reason why we are here at the United Nations and attempt to give the dignity that this Organization deserves to these debates as and when they occur.

The meeting rose at 3.35 p.m.